

In the Matter of:  
MORTGAGE RESOLUTION SERVICING  
VS  
JPMORGAN CHASE

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**JOSEPH SMITH**

*February 09, 2017*

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LEGAL | MEDIA | EXPERTS

MORTGAGE RESOLUTION SERVICING vs JPMORGAN CHASE  
SMITH, JOSEPH on 02/09/2017

1                         UNITED STATES DISTRICT COURT  
2                         SOUTHERN DISTRICT OF NEW YORK  
3  
4         MORTGAGE RESOLUTION SERVICING,      )  
5         et al.,                                    )  
6  )  
7  Plaintiffs,      )  
8  )  
9  vs.  ) Case No.  
10  ) 15-cv-00293-LTS-JCF  
11  )  
12  )  
13  )  
14  )  
15  )  
16  VIDEOTAPED DEPOSITION OF JOSEPH A. SMITH, JR.  
17  (Taken by Plaintiffs)  
18  Raleigh, North Carolina  
19  Thursday, February 9th, 2017  
20  )  
21  )  
22  )  
23  )  
24  Reported in Stenotype by  
25  Amy A. Brauser, RPR, RMR, CLR  
  Transcript produced by computer-aided transcription

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1		VIDEOTAPED DEPOSITION OF JOSEPH A. SMITH,
2	ON BEHALF OF THE PLAINTIFFS:	JR., a witness called on behalf of Plaintiffs, before
3	BRENT TANTILLO, Esquire	Amy A. Brauser, Notary Public, in and for the State of
4	Tantillo Law PLLC	North Carolina, at the Law Offices of Poyner Spruill,
5	1629 K. Street N.W., Suite 300	301 Fayetteville Street, Suite 1900, Raleigh, North
6	Washington, D.C. 20006	Carolina, on Thursday, the 9th day of February, 2017,
7	(954) 617-8100	commencing at 9:31 a.m.
8	btantillo@tantillolaw.com	* * * * *
9	(and)	
10	ROBERTO L. Di MARCO, Esquire	
11	Walker & Di Marco, P.C.	
12	350 Main Street	
13	First Floor	
14	Malden, Massachusetts 02148	
15	(781) 322-3700	
16	(781) 322-3757 Fax	
17	rdimarco@walkerdimarcopc.com	
18	(and)	
19	MATTHEW D. QUINN, Esquire	
20	Law Offices of F. Bryan Brice, Jr.	
21	127 W. Hargett Street	
22	Suite 600	
23	Raleigh, North Carolina 27601	
24	(919) 754-1600	
25	(919) 573-4252	
	matt@attybryanbrice.com	
	ON BEHALF OF THE DEFENDANTS:	
	CHRISTIAN J. PISTILLI, Esquire	
	Covington & Burling, LLP	
	One City Center	
	850 Tenth Street, NW	
	Washington, D.C. 20001-4956	
	(202) 662-5342	
	cpistilli@cov.com	
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1	APPEARANCES (con't)	INDEX OF EXAMINATIONS
2	ON BEHALF OF THE WITNESS:	By Mr. Tantillo. . . . . Page 8
3	STEVEN B. EPSTEIN, Esquire	
4	Poyner Spruill, LLP	
5	301 Fayetteville Street	
6	Suite 1900	
7	Raleigh, North Carolina 27601	
8	(919) 783-2846	
9	(919) 783-1075 Fax	
10	sepstein@poynerspruill.com	
11	ALSO PRESENT:	INDEX OF EXHIBITS
12	Laurence Schneider	
13	Dave Severance, Videographer	
14		NUMBER DESCRIPTION MARKED/IDENTIFIED
15		6 Exhibit 1 DOJ/AG National Mortgage 26
16		7 Settlement Bates
17		8 JPMC-MRS-00134158 to 163
18		9 Exhibit 2 National Mortgage Settlement 34
19		10 Activities; Recovery Update Bates
20		11 JPMC-MRS-00050891 to 893
21		12 Exhibit 3 E-mail string Bates 40
22		13 JPMC-MRS-00368705 to 706
23		14 Exhibit 4 City of Milwaukee letter of 41
24		15 July 9, 2014 Bates
25		16 JPMC-MRS-00159624 to 632
		17 Exhibit 5 E-mail string Bates 45
		18 JPMC-MRS-00054148 to 150
		19 Exhibit 6 DOJ Metric 31 Summary Bates 46
		20 JPMC-MRS-00165682 to 711
		21 Exhibit 7 REG-X Loan Lien Release Bates
		22 JPMC-MRS-00314536
		23 Exhibit 8 Letter from Patrick Boyle of
		24 Chase Bates JPMC-MRS-00023726
		25 to 727

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1			1	Defendants.
2	Exhibit 9 Letter from Patrick Boyle of	80	2	MR. EPSTEIN: And I'm Steven Epstein.
3	Chase Bates JPMC-MRS-00159554		3	I represent the witness, Joseph A. Smith, Jr.
4	to 555		4	THE VIDEOGRAPHER: May I ask the court
5	Exhibit 10 Lien Release Summary Bates	82	5	reporter to, please, swear in the witness.
6	JPMC-MRS-00155435 to 436		6	(WITNESS SWORN)
7	Exhibit 11 E-mail string Bates	84	7	THE VIDEOGRAPHER: Thank you.
8	JPMC-MRS-00051853		8	You may begin.
9	Exhibit 12 E-mail string Bates	85	9	MR. TANTILLO: Thank you.
10	JPMC-MRS-00054148 to 150		10	JOSEPH A. SMITH, JR.,
11	Exhibit 13 E-mail string Bates	96	11	having been first duly sworn to tell the truth, was
12	JPMC-MRS-00051742 to 746		12	examined and testified as follows:
13	Exhibit 14 Exhibit D - Consumer Relief Requirements	102	13	EXAMINATION
14			14	BY MR. TANTILLO:
15	Exhibit 15 Request for Mortgage Assistance Form	107	15	Q. Mr. Smith, can you, please, state your full name for the record?
16			16	A. My name is Joseph Alderson Smith, Jr.
17	Exhibit 16 Lien Release Program Bates	119	17	Q. How old are you, sir?
18	JPMC-MRS-00022205 to 206		18	A. I am 67 years old.
19			19	Q. Mr. Smith, I'm going to be asking you various questions. I want to ask you first, have you ever been deposed before?
20			20	A. I have.
21			21	Q. Obviously, if you've been deposed before, you certainly know the drill. Obviously, our position
22			22	
23			23	
24			24	
25			25	
	P R O C E E D I N G S	Page 7		Page 9
1	THE VIDEOGRAPHER: This begins		1	is you must answer the -- obviously, each question
2	Volume 1, Tape Number 1 of the videotaped		2	truthfully unless your attorney tells you clear --
3	deposition of Joseph Smith, taken in the matter		3	clearly not to do so. Although, as you know, there's
4	of Morgan Resolution Servicing, et al., versus		4	no judge present, this is a formal legal proceeding
5	JPMorgan Chase, NA, et al., in the United States		5	just like testifying in court and you're under the
6	District Southern -- sorry, in the United States		6	same legal obligation to tell the truth as if you were
7	Court, Southern District of New York, case		7	testifying in court.
8	number 12-CV-00293-LTS-JCF. This deposition is		8	If you do not understand anything I say,
9	being held at Poyner and Spruill, located at 301		9	just ask me to rephrase the question. And before the
10	Fayetteville Street, Suite 1900, Raleigh, North		10	deposition can be used in court, you will have the
11	Carolina 27601, on February 9, 2017 at		11	opportunity to amend or correct your statement. Do
12	approximately 9:31 a.m.		12	you understand this?
13			13	A. I do.
14	My name is Dave Severance with the firm		14	Q. Mr. Smith, we have received documentation
15	of Legal Media Experts. I am the legal video		15	production from your attorney, Mr. Epstein, of Poyner
16	specialist. The court reporter with us today,		16	Spruill pursuant to our subpoena issued January 10th,
17	also in association with Legal Media Experts, is		17	2017. The documents you have produced are
18	Amy Brauser.		18	communications between your office and Wall Street
19	For the record, may I ask counsel to		19	Journal reporter, Emily Glazer, and your production
20	introduce themselves and whom they represent.		20	regarding consumer complaints. Is that your
21	MR. TANTILLO: Good morning, my name is		21	understanding?
22	Brent Tantillo. I represent Mortgage Resolution		22	A. Yes.
23	Servicing, LLC; S&A Capital Partners, Inc.; and		23	Q. Did you communicate with anyone about the
24	1st Fidelity Loan Servicing, LLC.		24	subpoena you received and your testimony today?
25	MR. PISTILLI: Chris Pistilli for		25	A. I communicated with my counsel and with my

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<p>1       colleagues who I asked to do a document search 2       necessary to respond to your subpoena.</p> <p>3       Q.     And who -- what colleagues are you talking 4       about?</p> <p>5       A.     Ruth McCree who is a paralegal in the law 6       firm and Martha Svoboda, S-V-O-B-O-D-A, who is of 7       counsel in the firm.</p> <p>8       Q.     Did you review or prepare any documents in 9       preparation for this deposition?</p> <p>10      A.     No.</p> <p>11      Q.     Are you on any medication today that would 12     impair your testimony?</p> <p>13      A.     No, I'm not.</p> <p>14      Q.     What is your education, sir?</p> <p>15      A.     Well, I'm a graduate of the Kanawha County 16     public schools in West Virginia, Davidson College, and 17     the University of Virginia Law School.</p> <p>18      Q.     And where are you licensed to practice 19     law?</p> <p>20      A.     In New York and North Carolina.</p> <p>21      Q.     And how long have you -- oh, well, excuse 22     me, where do you currently work?</p> <p>23      A.     I'm a partner, an income partner I should 24     say, of Poyner Spruill, LLP, and I'm also president of 25     Office of Mortgage Settlement Oversight.</p>	<p>Page 10</p> <p>1       Q.     And those were regarding the National 2       Mortgage Settlement?</p> <p>3       A.     They were -- they were mortgage 4       settlements, yes. They were settlements of mortgage 5       issues, yes.</p> <p>6       Q.     Now, is -- was there another settlement 7       that you were previously a monitor for relating to 8       residential mortgage-backed securities?</p> <p>9       A.     Yes, I was monitor of the settlement 10     between the United States Department of Justice and 11     several states and JPMorgan Chase regarding 12     residential mortgage-backed securities.</p> <p>13      Q.     How were you chosen to become the monitor 14     of these settlements?</p> <p>15      A.     I was agreed to -- in the case of the -- 16     in the case of the judgments commonly called the 17     National Mortgage Settlement, I was agreed to by the 18     parties.</p> <p>19      Q.     Was there like an application process?</p> <p>20      A.     No.</p> <p>21      Q.     You were just recommended?</p> <p>22      A.     I have no idea what happened. I -- I 23     don't. I was -- I was -- I was -- I received a 24     request -- a request for an indication of interest 25     and -- from the then Attorney General of North</p>
<p>1       Q.     So that's its own separate corporation?</p> <p>2       A.     It is.</p> <p>3       Q.     And for how long have worked at Poyner 4       Spruill?</p> <p>5       A.     In my most recent employment by the firm, 6       it was after my -- it was from 2012, right before the 7       commencement of the National Mortgage Settlement.</p> <p>8       Q.     And where did you work prior to joining 9       Poyner Spruill?</p> <p>10      A.     I was North Carolina Commissioner of 11     Banks.</p> <p>12      Q.     Now, for which settlements do you serve as 13     the monitor?</p> <p>14      A.     I am monitor under consent judgments, 15     commonly called the National Mortgage Settlement 16     currently, with regard to Ocwen Loan Servicing, HSBC, 17     and SunTrust Banks. Prior, from -- from 2012 until 18     2015 -- '16, actually, finally was -- I completed my 19     work on five consent judgments, which ultimately 20     became six consent judgments, between Bank of -- 21     between Bank of America, Wells Fargo, Chase, Citi, and 22     originally GMAC which then became Ocwen and Ditech. 23     Well, became Greentree which then became Ditech. 24     Those settlements were with 49 states and the United 25     States of America.</p>	<p>Page 11</p> <p>1       Carolina, and having said yes, I was then -- had 2       discussions with the governments and with the 3       servicers and was chosen.</p> <p>4       Q.     What day did you start as monitor for the 5       National Mortgage Settlement?</p> <p>6       A.     April 4th -- well, the -- the judgments 7       were filed April 4th and 5th of 2012.</p> <p>8       Q.     And what day did you start as the monitor 9       of the residential mortgage-backed security 10      settlement?</p> <p>11      A.     I honestly don't remember the date of that 12      settlement.</p> <p>13      Q.     How much was the total budget for the 14      monitor for the National Mortgage Settlement?</p> <p>15      A.     It varied over time. As it got -- in 16     recent -- during the time when the five original 17     consent judgments were ongoing, it was about 18     \$70 million a year. And in recent times, it is -- 19     because there are fewer judgments now, it is a smaller 20     budget. It is still, in the last year, the year 21     just -- and we're on fiscal years ending June 30, it 22     was just under 60 million and it will go down from 23     there.</p> <p>24      Q.     Now, who pays this particular fee for 25     the -- I guess, for the monitoring of these</p>

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<p>1 settlements?</p> <p>2 A. The settlement -- the consent judgments</p> <p>3 for -- that comprise a settlement each require the</p> <p>4 adoption of a budget which has to be reviewed and</p> <p>5 approved. It has to be agreed to with the servicers</p> <p>6 and then reviewed and approved by a monitoring</p> <p>7 committee comprised of representatives of state and</p> <p>8 federal governments and -- so that's -- that's how it</p> <p>9 was -- was always done.</p> <p>10 Q. Now, do the banks pay for part of this --</p> <p>11 A. They paid the entire --</p> <p>12 Q. -- monitoring?</p> <p>13 A. -- they paid the -- they paid assessments</p> <p>14 under the budget.</p> <p>15 Q. And are you aware of the amount that</p> <p>16 JPMorgan Chase paid towards these budgets?</p> <p>17 A. I don't remember.</p> <p>18 Q. Now, how much were you personally</p> <p>19 compensated to be the monitor of these settlements?</p> <p>20 A. In the first year, it was around \$350,000</p> <p>21 and the subsequent years it was 650,000 per year.</p> <p>22 Q. And was that the same for the NMS and the</p> <p>23 RMBS settlements?</p> <p>24 A. No, um, no.</p> <p>25 Q. So the RMBS settlement, how much was --</p>	<p>Page 14</p> <p>1 And I think that's it.</p> <p>2 Q. Who are your primary contacts at BDO?</p> <p>3 A. Anthony Lendez was the engagement partner</p> <p>4 at BDO.</p> <p>5 Q. And how do spell his last name, do you</p> <p>6 know?</p> <p>7 A. L-E-N -- yes, I do. L-E-N-D-E-Z.</p> <p>8 Q. Who are your primary contacts at Grant</p> <p>9 Thornton?</p> <p>10 A. Oh, gosh, senior moment. Well, Dave</p> <p>11 Wedding is the chairman of Grant Thornton, but he was</p> <p>12 not my primary contact. I forgot Aaron's last name,</p> <p>13 but I can -- I will correct it in my -- if allowed.</p> <p>14 Q. Who served as the outside counsel for</p> <p>15 OMSO?</p> <p>16 A. Poyner Spruill, LLP and Smith Moore</p> <p>17 Leatherwood.</p> <p>18 Q. And who were the primary individuals at</p> <p>19 Poyner Spruill that were handling your representation?</p> <p>20 MR. EPSTEIN: During what period of</p> <p>21 time are you referencing?</p> <p>22 MR. TANTILLO: From, I guess, the</p> <p>23 period of the settlement, 2012 until '14 or '15.</p> <p>24 THE WITNESS: The primary lawyers --</p> <p>25 lawyer at Poyner Spruill, LLP was William S.</p>
<p>1 what's the budget for that and how much were you</p> <p>2 compensated?</p> <p>3 A. I don't remember exactly. I had a fee of</p> <p>4 200,000 per year of -- of work in that settlement.</p> <p>5 Q. Now, who were the third-party contractors</p> <p>6 and attorneys used by the Offices of the Monitor?</p> <p>7 A. I retained -- well, first, let me point</p> <p>8 out, I created the Office of Mortgage Settlement</p> <p>9 Oversight, Inc., which is a not-for-profit corporation</p> <p>10 through which I contracted with -- Poyner Spruill, LLP</p> <p>11 was a counsel -- one of my counsels. Smith Moore</p> <p>12 Leatherwood, which is another North Carolina firm, was</p> <p>13 another of my counsel. I then had -- I then -- OMSO</p> <p>14 contracted with six accounting firms, although they</p> <p>15 now call themselves professional services firms.</p> <p>16 Q. Right.</p> <p>17 A. One primary professional services firm</p> <p>18 which was BDO USA, which is a subsidiary of BDO</p> <p>19 Worldwide, I guess. That was the -- the primary firm.</p> <p>20 Then -- and that -- and then with Grant Thornton, Crow</p> <p>21 Horwath, Baker Tilly, and there -- there are longer</p> <p>22 strings of names that's on each of these firms, but</p> <p>23 there are -- there were six in all. RS -- what's now</p> <p>24 called RSM used to be called McGladrey. B -- BKD</p> <p>25 which is a large accounting firm from the midwest.</p>	<p>Page 15</p> <p>1 Cherry, Jr. There were a number of other</p> <p>2 lawyers from that firm who were engaged,</p> <p>3 involved.</p> <p>4 BY MR. TANTILLO:</p> <p>5 Q. Was -- you mentioned her name, Martha</p> <p>6 Svoboda, is that --</p> <p>7 A. Yes.</p> <p>8 Q. Was she also involved?</p> <p>9 A. Oh, yes, yes.</p> <p>10 Q. What about Scott Stein, was he also</p> <p>11 involved at some point?</p> <p>12 MR. EPSTEIN: You mean Josh Stein?</p> <p>13 BY MR. TANTILLO:</p> <p>14 Q. Excuse me, Josh Stein.</p> <p>15 A. Josh Stein was the primary lawyer or</p> <p>16 contact with Smith Moore Leatherwood, LLP which is a</p> <p>17 different law firm.</p> <p>18 Q. And what was the difference between what</p> <p>19 Smith Moore Leatherwood would do for OMSO versus</p> <p>20 Poyner Spruill?</p> <p>21 A. They both were part of a management group</p> <p>22 which helped me interpret the settlement documents and</p> <p>23 implement the settlement, so there was no -- there's</p> <p>24 no distinction of the kind of things they did.</p> <p>25 Q. Did you receive partnership compensation</p>

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<p>1 as a result of hiring Poyner Spruill for OMSO?</p> <p>2 A. No. I'm an income partner.</p> <p>3 Q. Was there any other compensation or</p> <p>4 referral fees?</p> <p>5 A. No.</p> <p>6 Q. Did the National Mortgage Settlement place</p> <p>7 a bar on you for not being retained by any party to</p> <p>8 settlement for a period of two years after the</p> <p>9 conclusion of the terms of the engagement?</p> <p>10 A. Yes.</p> <p>11 Q. Was Poyner Spruill or other professionals</p> <p>12 barred as well from serving for one year?</p> <p>13 A. Yes, although it's -- it's a more limited</p> <p>14 limitation than that, but yeah, and that year has</p> <p>15 passed, by the way.</p> <p>16 Q. If that's so, how are you able to be</p> <p>17 retained as the monitor of the -- of the RMBS</p> <p>18 settlement?</p> <p>19 A. It was the same -- it was not viewed by</p> <p>20 the parties of that settlement as being retention by</p> <p>21 Chase. Chase -- it's -- it's the same -- it was</p> <p>22 exactly the same kind of work that we did in the NMS,</p> <p>23 and so it was -- I was -- I was -- I was retained by</p> <p>24 agreement between the Justice Department and Chase and</p> <p>25 compensated by Chase, but I was -- I was to be</p>	<p>Page 18</p> <p>1 A. Yes, although I met with that committee</p> <p>2 weekly to start and then biweekly for the entire</p> <p>3 period of the settlement.</p> <p>4 Q. Now, did the Monitor Committee change as</p> <p>5 people would leave government or not?</p> <p>6 A. Yes.</p> <p>7 Q. Do you remember any particular changes</p> <p>8 that occurred?</p> <p>9 A. No.</p> <p>10 MR. EPSTEIN: Objection to form.</p> <p>11 THE WITNESS: No. Yeah, no.</p> <p>12 BY MR. TANTILLO:</p> <p>13 Q. Was there a Monitoring Committee for the</p> <p>14 RMBS settlement?</p> <p>15 A. No.</p> <p>16 Q. Did you or your office participate in any</p> <p>17 cross servicer meetings?</p> <p>18 A. We had meetings with the servicers as a</p> <p>19 group.</p> <p>20 Q. So the meetings would be all the people</p> <p>21 involved in the National Mortgage Settlement together?</p> <p>22 A. Yes.</p> <p>23 Q. Who attended it and why? What was the</p> <p>24 purpose of those meetings?</p> <p>25 A. The purpose of the meetings was to</p>
<p>1 independent.</p> <p>2 Q. What is the Monitoring Committee? I know</p> <p>3 you mentioned that previously.</p> <p>4 A. The Monitoring Committee is a committee</p> <p>5 provided for in the settlement documents that is</p> <p>6 comprised of representatives, at least in the</p> <p>7 original -- well, in the -- in the original five</p> <p>8 judgments, it was comprised of representatives of 15</p> <p>9 states and had federal government representation also</p> <p>10 from the Department of HUD and from the US Justice</p> <p>11 Department Trustee Program, which is a bankrupt --</p> <p>12 bankruptcy trustee program.</p> <p>13 Q. Do you remember who you dealt with at DOJ?</p> <p>14 A. Yes.</p> <p>15 Q. Who was that individual?</p> <p>16 A. Usually it was Diarmuid Gorham.</p> <p>17 Q. Do you remember who you dealt with</p> <p>18 regarding the state AGs?</p> <p>19 A. Well, there were again, it was a</p> <p>20 committee. The chairman of the committee was Patrick</p> <p>21 Madigan who is an assistant attorney general or deputy</p> <p>22 attorney general of Iowa and Richard Bischoff of</p> <p>23 Texas, they were cochairs.</p> <p>24 Q. And they were your two point people</p> <p>25 regarding the state AGs?</p>	<p>Page 19</p> <p>1 establish uniform rules of performance and measurement</p> <p>2 for all the servicers and to work out disagreements</p> <p>3 over interpretations of the settlement doc --</p> <p>4 settlement -- the consent judgments, their terms.</p> <p>5 Q. So the different servicers, you want to</p> <p>6 make sure they were all on the same page?</p> <p>7 A. Yes.</p> <p>8 Q. In relation to your duties as monitor of</p> <p>9 the National Mortgage Settlement and the RMBS</p> <p>10 settlements, did you review JPMorgan Chase -- Chase's</p> <p>11 system of records?</p> <p>12 A. We did. I did and my colleagues did.</p> <p>13 Q. What did you do in order to review Chase's</p> <p>14 system of records?</p> <p>15 A. We met with the management, and by the</p> <p>16 way, we did this with every servicer, not just with</p> <p>17 Chase, with every servicer. We would meet with the</p> <p>18 management and with the people involved with the --</p> <p>19 the management of their mortgage servicing programs</p> <p>20 including the information technology people, and we</p> <p>21 would get a -- they would present to us the nature of</p> <p>22 their systems, and they all had several, the</p> <p>23 relationship with those systems, and we began with</p> <p>24 that process, a familiarization with those systems,</p> <p>25 which was preparatory to doing the work necessary to</p>

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<p>1 monitor the settlement.</p> <p>2 Q. So would you actually go into the bank and</p> <p>3 actually look at the various systems and they would</p> <p>4 sort of walk you through that process?</p> <p>5 A. We -- we would review the nature of the</p> <p>6 systems themselves and had significant disclosures</p> <p>7 about it. We never operated the system or in any way</p> <p>8 took control of the system.</p> <p>9 Q. Did your third-party representatives, such</p> <p>10 as BDO and the various accounting firms, did they do a</p> <p>11 process by which they would actually go into the</p> <p>12 various system of records and perform various tests?</p> <p>13 A. We didn't -- we never went into systems of</p> <p>14 record. We would review output from systems of</p> <p>15 record.</p> <p>16 Q. And what was the nature of that output?</p> <p>17 A. We would review the output to determine --</p> <p>18 we would review with the managements the queries which</p> <p>19 they would -- sent into the systems of record to -- to</p> <p>20 extract, where necessary, populations of loans covered</p> <p>21 by various metrics. And so it involved a long and</p> <p>22 continuous, by my colleagues, interaction with the</p> <p>23 managements of all the servicers and their technical</p> <p>24 people to satisfy ourselves as best we could that we</p> <p>25 were getting a complete population where needed.</p>	<p style="text-align: right;">Page 22</p> <p>1 BY MR. TANTILLO:</p> <p>2 Q. Can you -- let me just restate the</p> <p>3 question because you answered it. So you said there's</p> <p>4 no independent integrity?</p> <p>5 MR. EPSTEIN: Objection to form.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. TANTILLO:</p> <p>8 Q. You had -- Mr. Smith, did you have a duty</p> <p>9 to review the integrity of the systems of records?</p> <p>10 A. We did not.</p> <p>11 Q. Did any independent third party working</p> <p>12 with OMSO review the integrity of the system of</p> <p>13 records?</p> <p>14 A. No.</p> <p>15 Q. As monitor of the settlements, are you</p> <p>16 responsible for reviewing the servicers' system of</p> <p>17 records?</p> <p>18 MR. EPSTEIN: Objection to form as to</p> <p>19 what you mean by "records."</p> <p>20 THE WITNESS: I actually don't</p> <p>21 understand that question.</p> <p>22 BY MR. TANTILLO:</p> <p>23 Q. Under the National Mortgage Settle --</p> <p>24 Settlement, who is responsible to review the</p> <p>25 servicers' system of records?</p>
<p>1 Q. Now, you mentioned various queries, what</p> <p>2 type of queries were those?</p> <p>3 A. I don't remember in detail. We have -- in</p> <p>4 my reports to the court, we have fairly significant,</p> <p>5 some discussions at least, of the kinds of things --</p> <p>6 processes we went through.</p> <p>7 Q. Would they be -- was there various types</p> <p>8 of metric testing that was performed?</p> <p>9 A. Well, the whole purpose -- the settlement</p> <p>10 had two parts, one was consumer relief, the other was</p> <p>11 servicing standards, measurement under metrics.</p> <p>12 In the case of metrics, there was testing</p> <p>13 which was provided for in the settle -- in the consent</p> <p>14 judgment documents. They -- it was defined what we</p> <p>15 were to do. And so this exercise I've just described</p> <p>16 was in furtherance of implementing what the consent</p> <p>17 judgments said.</p> <p>18 Q. But you had to rely on what the various</p> <p>19 servicers were providing to you?</p> <p>20 A. Yes.</p> <p>21 Q. So there was no independent process on</p> <p>22 your part to verify the integrity of the systems of</p> <p>23 records?</p> <p>24 A. That is correct.</p> <p>25 MR. PISTILLI: Objection.</p>	<p style="text-align: right;">Page 23</p> <p>1 MR. EPSTEIN: Objection to form as to</p> <p>2 what the word "reviewing" means.</p> <p>3 MR. PISTILLI: Objection.</p> <p>4 BY MR. TANTILLO:</p> <p>5 Q. Let's move to IRG. What is the IRG, or</p> <p>6 the Independent Review Group.</p> <p>7 MR. EPSTEIN: Objection to form,</p> <p>8 mischaracterizes the actual name of the group,</p> <p>9 but go ahead.</p> <p>10 THE WITNESS: Well, there is -- each of</p> <p>11 the servicers was required by the consent</p> <p>12 judgments to establish an independent review</p> <p>13 group which was -- could be, and usually was,</p> <p>14 employees of the servicers -- of the servicer</p> <p>15 but who were independent of the mortgage</p> <p>16 servicing operation. I would analogize that to</p> <p>17 being independent in the way independent</p> <p>18 auditors are -- are independent of management,</p> <p>19 operating management, in another context. They</p> <p>20 were to report in a way that was independent of</p> <p>21 the -- of management such as to preserve their</p> <p>22 independence. And they were review -- they were</p> <p>23 the first review of management's submission of</p> <p>24 its various proofs that it had complied.</p> <p>25</p>

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1	BY MR. TANTILLO:		
2	Q. Mr. Smith, I'm going to show you what's	1	detail the protocols under which the company, as I
3	been marked as Exhibit Number 1.	2	recall, it would do its -- the IRG would do its work
4	(EXHIBIT NUMBER 1 WAS MARKED FOR IDENTIFICATION)	3	in reviewing the company's performance and the
5	BY MR. TANTILLO:	4	servicer's performance, and my colleagues and I would
6	Q. This is document Bates number	5	do our work in validating or reviewing their work.
7	JPMC-MRS-00134158.	6	Q. And what type of items were inside a work
8	MR. TANTILLO: And I'll let counsel for	7	plan?
9	Chase review this.	8	A. I don't remember the details of work
10	MR. PISTILLI: Do you have copies?	9	plans.
11	MR. TANTILLO: Of course, I do.	10	Q. Who would produce -- or who would create
12	MR. EPSTEIN: Do you have one for me as	11	this work plan?
13	well, please?	12	A. It would be negotiated between the
14	MR. TANTILLO: Yes, sir.	13	servicer and my colleagues and me.
15	MR. EPSTEIN: Thank you.	14	Q. And who created the final document itself
16	BY MR. TANTILLO:	15	or what the work plan was?
17	Q. Mr. Smith, if you could turn to page 2 of	16	A. I don't recall.
18	this document.	17	Q. Did the Department of Justice or the
19	MR. EPSTEIN: Oh, take whatever time	18	Monitoring Committee see this work plan?
20	you need to review the document.	19	A. Yes.
21	MR. PISTILLI: And sorry, do you have a	20	Q. Does the work plan change any of the
22	copy for me?	21	requirements of the National Mortgage Settlement?
23	MR. TANTILLO: Yeah, of course.	22	A. No.
24	MR. PISTILLI: Thank you.	23	Q. How about the HAMP, did it change any of
25		24	the requirements --
		25	A. I'm sorry?
	Page 27		Page 29
1	BY MR. TANTILLO:	1	Q. Did it change any of the requirements
2	Q. Please let me know when you've had a	2	regarding the HAMP?
3	chance to fully review the document.	3	A. We were not engaged in monitoring
4	(WITNESS REVIEWS DOCUMENT)	4	conformity with HAMP.
5	Mr. Smith, have you reviewed this	5	MR. PISTILLI: I'm -- I'm just going to
6	document, Exhibit Number 1?	6	make an objection. Just want to -- I've been
7	A. Yes.	7	giving you some latitude to ask some background
8	Q. Referring to page 2 of this document, you	8	questions, Brent, but as you know, the
9	just described how the IRG worked. Was this a fair	9	magistrate judge on this case has entered an
10	representation of your understanding of how this	10	order limiting discovery that can go forward at
11	particular process worked?	11	this time. I've not yet heard a single question
12	A. Well, it describes the organization	12	that touches on any of the narrow issues on
13	through which they did their work.	13	which the magistrate judge has permitted
14	Q. And there is a -- sort of a dotted line	14	discovery. To the extent any of the questions
15	between the line of business and the IRG. Was that	15	you've been asking so far have relevance to any
16	the sort of the representation as you said previously	16	issues that I'm aware of would be relevant only
17	that there -- this group was supposed to be separate	17	to the state portion of the MRS case or the now
18	from the line of business?	18	dismissed DC action. So, you know, I'm really
19	A. Yes.	19	going to have to insist as we move forward that
20	Q. Thank you.	20	you comply with Judge Francis's order and limit
21	Let me ask you a question, what is the	21	your questioning appropriately.
22	work plan?	22	MR. TANTILLO: My response to that is
23	A. The work plan for each of the judgments	23	the following: The magistrate allowed us to
24	that comprised the settlement was a negotiated	24	inquire into several areas. First of all, the
25	document that outlined in some detail -- well, in	25	Recovery 1 system of records, the second lien

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<p>1 extinguishment program, and the various lien 2 releases that occurred. I believe our position 3 is that all of this is relevant to those 4 particular claims that are within the -- Judge 5 Francis's order.</p> <p>6 MR. PISTILLI: I disagree and I'm going 7 to continue to object, and if necessary, we'll 8 get Judge Francis on the phone to clarify.</p> <p>9 THE WITNESS: May I consult with my 10 counsel for a minute?</p> <p>11 (DISCUSSION HELD OFF THE RECORD)</p> <p>12 THE VIDEOGRAPHER: The time is 13 9:59 a.m. We'll be going off record.</p> <p>14 (RECESS TAKEN)</p> <p>15 THE VIDEOGRAPHER: The time now is 16 10:05 a.m. We will be going back on record 17 after I offer a correction. I read the case 18 number incorrectly as 12-CV. It is 19 15-CV-00293-LTS-FCP. I apologize for that 20 error, and you may begin.</p> <p>21 MR. TANTILLO: I want to go back to the 22 objection that Mr. Pistilli made. It's our 23 position that it's a standing objection that you 24 have at this point.</p> <p>25 MR. PISTILLI: It's a standing</p>	<p style="text-align: right;">Page 30</p> <p>1 issues that you all have been discussing. 2 3 MR. TANTILLO: Mr. Pistilli, I think 4 our position would be if there's any questions 5 in this deposition that you're opposed to, you 6 can move it to -- move to strike that testimony 7 at a later date. 8 9 MR. PISTILLI: So you'd violate the 10 court order now and then we move to strike 11 later? That -- that's unacceptable. We're 12 going to continue to object, and if the 13 inappropriate lines of questioning continue, we 14 reserve all rights to seek any appropriate 15 actions from the magistrate judge, either during 16 the course of the deposition or after. 17 18 MR. TANTILLO: That's reasonable, but I 19 think our position is that, obviously, we're 20 willing to allow you to move to strike the, you 21 know, matters and the questions later. 22 23 MR. PISTILLI: I understand your 24 position. Our position is that you may not ask 25 questions that violate a court order. BY MR. TANTILLO: Q. Regarding -- moving back to the systems of</p>
<p>1 objection, and I'll certainly object further 2 as -- you know, if the inappropriate questioning 3 continues.</p> <p>4 MR. TANTILLO: Well, regarding that, 5 Mr. Pistilli, obviously, you are an invited 6 guest here. I believe that would be the 7 position Mr. Epstein would be able to object to 8 that. Under the local rules, that's my 9 understanding.</p> <p>10 MR. PISTILLI: I -- I disagree. It is 11 Judge Francis's order in this case. Here to 12 represent Chase's interest in this case. I'm 13 entitled to object on the basis on your 14 continuing violation of a court order in this 15 case.</p> <p>16 MR. EPSTEIN: And let me just -- since 17 you invoked my name, let me state for the 18 record, we view our position here today as -- as 19 a nonparty, and as a nonparty, we have not 20 studied the court's order, we have not studied 21 the Complaint, we have not studied what is or is 22 not relevant, and we're not here to make those 23 decisions today. And we will answer questions 24 that are calling for nonprivileged information 25 and we'll let the parties sort out the other</p>	<p style="text-align: right;">Page 31</p> <p>1 record, Mr. Smith, you stated you did not have the 2 ability to review the integrity of the systems of 3 record?</p> <p>4 MR. PISTILLI: Objection, misstates 5 prior testimony.</p> <p>6 MR. EPSTEIN: You can answer to the 7 extent you can.</p> <p>8 THE WITNESS: We were not required to 9 do that and we were not under the orders under 10 the consent judgments given the authority to do 11 that. It was, one, we were allowed to receive 12 an independent report on the system of record 13 annually.</p> <p>14 BY MR. TANTILLO:</p> <p>15 Q. As part of the systems of record that you 16 reviewed, were you informed about a system of record 17 called Recovery 1?</p> <p>18 A. Yes.</p> <p>19 Q. As you understand it, what is Recovery 1?</p> <p>20 A. I actually don't have a -- a -- a good 21 recollection of what Recovery 1 entails entirely. 22 I'm -- I'm aware it was one of the systems that Chase 23 had for managing the servicing portfolio.</p> <p>24 Q. Mr. Smith, I'm showing you what has been 25 marked as Exhibit Number 2.</p>

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	Page 34	Page 36
1	(EXHIBIT NUMBER 2 WAS MARKED FOR IDENTIFICATION)	
2	MR. TANTILLO: Let me show it to Chase	
3	counsel.	
4	MR. PISTILLI: Could I have a copy,	
5	please?	
6	MR. TANTILLO: Of course.	
7	MR. EPSTEIN: Thank you.	
8	MR. TANTILLO: Yes, sir.	
9	(WITNESS REVIEWS DOCUMENT)	
10	BY MR. TANTILLO:	
11	Q. This document refers to a discovery by	
12	Grant Thorton. Were you aware of that, when Grant	
13	Thorton became aware of Recovery 1?	
14	A. Yes.	
15	MR. PISTILLI: Object to form.	
16	THE WITNESS: Well, no. I -- yeah, I	
17	was aware of the fact that Grant Thorton had	
18	determined that Recovery 1 loans were not being	
19	included in populations for metrics testing.	
20	BY MR. TANTILLO:	
21	Q. Would that surprise you?	
22	A. I don't remember whether it surprised me	
23	or not.	
24	Q. With regards to Grant Thorton's discovery,	
25	what actions did you take to resolve this particular	
	Page 35	Page 37
1	problem?	
2	MR. EPSTEIN: Objection to the form of	
3	that question.	
4	MR. PISTILLI: Join.	
5	BY MR. TANTILLO:	
6	Q. What did you do when you learned of this	
7	discovery?	
8	A. I consulted with my colleagues about what	
9	an appropriate response would be. As this document	
10	suggests, there was an interpretative issue here and	
11	after consultation, determined that the loans in	
12	Recovery 1 should be included in populations and	
13	instructed -- in fact, instructed all parties to	
14	prospectively include these loans when defining	
15	populations for the metrics where they were -- could	
16	be included. Well, for all metrics, but they were in	
17	some and not others.	
18	Q. Now, you're referring to metrics, what is	
19	the metrics testing of the National Mortgage	
20	Settlement?	
21	A. Each -- the National Mortgage Settlement	
22	had about 300 -- just over 300 servicing standards.	
23	Measurement of performance of those standards was only	
24	to be done through metrics testing, that is to say the	
25	use of tests to determine whether the -- each of the	

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<p>1           A. I don't recall that I did.</p> <p>2           Q. Why did you add the three metrics?</p> <p>3           A. It's -- I actually added four metrics.</p> <p>4          Four metrics are added. Well, let's start from the beginning.</p> <p>6          Of the 304 servicing standards, not all were covered by the -- by the 19 metrics. There -- there were some that weren't. And as we got experience with measurement of these metrics and as we learned what was going on in the marketplace through our complaints and through my trips to ten states around the country to meet with attorneys general, advocates and the like, it was determined that there were some areas where we needed further testing and so the four metrics were negotiated between myself, the Monitoring Committee, and the servicers to address additional areas of concern.</p> <p>18         Q. Was the exclusion of the Recovery 1 population from the metrics testing one of your areas of concern?</p> <p>21         A. No.</p> <p>22         Q. Upon learning of the exclusion of Recovery 1, did you provide JPMorgan Chase the time to cure these violations?</p> <p>25         MR. PISTILLI: Objection.</p>	<p style="text-align: right;">Page 38</p> <p>1           (EXHIBIT NUMBER 3 WAS MARKED FOR IDENTIFICATION)</p> <p>2           MR. PISTILLI: Do you have copies?</p> <p>3           MR. TANTILLO: Yeah, of course.</p> <p>4           (WITNESS REVIEWS DOCUMENT)</p> <p>5         BY MR. TANTILLO:</p> <p>6          Q. Did OMSO instruct JPMorgan Chase that so long as the JPM -- JP -- JPMC, excuse me, is releasing the first and second liens on the subject properties that RCB1 loans could be excluded from metrics testing?</p> <p>11         A. Well, this document, Exhibit 3, you've just given me says that, and it is -- would be consistent with the fact that the settlement only applied to loans as to which a mortgage -- an existing mortgage and lien.</p> <p>16         Q. Did you know that this caused Chase to file lien releases on loans that were sold in note sales to companies like my client, Mortgage Resolution Servicing?</p> <p>20         A. No.</p> <p>21         MR. PISTILLI: Objection, lacks foundation.</p> <p>23         BY MR. TANTILLO:</p> <p>24         Q. Was the intent of this directive that OMSO provided, was it to apply to all loans in Recovery 1</p>
<p>1           MR. EPSTEIN: Objection to form.</p> <p>2           MR. PISTILLI: And lacks foundation.</p> <p>3           THE WITNESS: My only job was to measure performance under the settlement and so we revised our protocols to include Recovery 1 and proceeded forward.</p> <p>7         BY MR. TANTILLO:</p> <p>8         Q. Mr. Smith, did you provide JPMorgan Chase with extensions of time to bring Recovery 1 into metrics testing?</p> <p>11         A. I don't recall.</p> <p>12         Q. Mr. Smith, did you tell JPMorgan Chase that so long as they released the first and second liens they would not have to be subject to metrics testing?</p> <p>16         A. Whether I told them or not, I don't know. I -- I -- there was -- I don't remember.</p> <p>18         Q. Was there a point in time regarding Recovery 1 population, and obviously in terms of bringing the metrics testing, that you directed them to release the first and second liens?</p> <p>22         A. What I remember is, we included Recovery 1 loans in our considerations of metrics testing and proceeded on that protocol prospectively from a date I don't recall. I don't recall much else.</p>	<p style="text-align: right;">Page 39</p> <p>1           or was it to apply just to occupied properties?</p> <p>2           MR. EPSTEIN: Objection to form.</p> <p>3           MR. PISTILLI: Join the objection.</p> <p>4           MR. EPSTEIN: You can answer to the extent you can.</p> <p>6           THE WITNESS: Yeah, I don't have anything to add to Exhibit 3.</p> <p>8         BY MR. TANTILLO:</p> <p>9         Q. Did you analyze the effects of such lien release on municipalities?</p> <p>11         A. No.</p> <p>12         Q. Did any municipalities contact you regarding their concerns?</p> <p>14         A. Could you be more specific? I mean, I don't --</p> <p>16         Q. Sure.</p> <p>17         A. -- about --</p> <p>18         Q. Did any municipalities contact you regarding their concerns and the impact of such lien releases in their communities?</p> <p>21         A. I don't recall that.</p> <p>22         (EXHIBIT NUMBER 4 WAS MARKED FOR IDENTIFICATION)</p> <p>23         BY MR. TANTILLO:</p> <p>24         Q. Mr. Smith, I'm going to show you what's been marked as Plaintiffs' Exhibit Number 4.</p>

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<p>1 A. Uh-huh.</p> <p>2 MR. TANTILLO: Excuse me, Chris.</p> <p>3 MR. PISTILLI: I'm just, at this point,</p> <p>4 going to renew my continuing objection that this</p> <p>5 line of questioning violates Judge Francis's</p> <p>6 order limiting discovery in this case. I can't</p> <p>7 see how any of this has any conceivable</p> <p>8 relevance to any of the issues that the court</p> <p>9 determined were appropriate subjects of</p> <p>10 discovery at this time, and certainly invite you</p> <p>11 to make a proffer, but, you know, this line of</p> <p>12 questioning is highly improper, in violation of</p> <p>13 Judge Francis's order as near as I can tell.</p> <p>14 MR. TANTILLO: I believe your objection</p> <p>15 is duly noted.</p> <p>16 MR. PISTILLI: You're declining my</p> <p>17 opportunity to explain what conceivable</p> <p>18 relevance this line of questioning has to issues</p> <p>19 that are permitted within the scope of Judge</p> <p>20 Francis's order limiting discovery?</p> <p>21 MR. TANTILLO: Judge Francis, in his</p> <p>22 order, said that anything regarding lien</p> <p>23 releases was applicable to the case that -- as</p> <p>24 it stands.</p> <p>25 MR. PISTILLI: Anything regarding</p>	<p style="text-align: right;">Page 42</p> <p>1 Mortgage Settlement, did they do anything in terms of</p> <p>2 trying to relieve the concerns of cities like</p> <p>3 Milwaukee?</p> <p>4 A. No.</p> <p>5 Q. Mr. Smith, do you know what the pre DOJ</p> <p>6 lien release project was?</p> <p>7 A. No.</p> <p>8 Q. Did JPMorgan Chase inform you that they</p> <p>9 released liens prior to October 1st of 2012?</p> <p>10 A. I don't recall if they did.</p> <p>11 Q. Were you informed of the fact that lien</p> <p>12 releases were occurring by JPMorgan Chase through the</p> <p>13 crediting process of these various settlements?</p> <p>14 MR. EPSTEIN: Objection to form.</p> <p>15 THE WITNESS: Could you -- could you be</p> <p>16 a little more specific of what . . .</p> <p>17 BY MR. TANTILLO:</p> <p>18 Q. Yes, sir.</p> <p>19 Why would JPMorgan Chase release these</p> <p>20 liens, did you know?</p> <p>21 A. I'm not sure --</p> <p>22 MR. PISTILLI: Objection.</p> <p>23 THE WITNESS: I'm not sure I know what</p> <p>24 liens we're discussing.</p> <p>25</p>
<p>1 releases of liens involving your client. None</p> <p>2 of this has any relevance to any of the</p> <p>3 commercial disputes between the parties in this</p> <p>4 case.</p> <p>5 MR. TANTILLO: Our position --</p> <p>6 MR. PISTILLI: I will continue my</p> <p>7 objection, reserve all rights to seek</p> <p>8 appropriate relief from the court.</p> <p>9 (WITNESS REVIEWS DOCUMENT)</p> <p>10 THE WITNESS: I was -- is there a</p> <p>11 question?</p> <p>12 BY MR. TANTILLO:</p> <p>13 Q. Yes, sir.</p> <p>14 Do you remember receiving this letter?</p> <p>15 A. I do, or letters like it, there were</p> <p>16 several.</p> <p>17 Q. What municipalities contacted you</p> <p>18 regarding letters like this?</p> <p>19 A. Milwaukee was the one I remember.</p> <p>20 Q. And upon receiving this letter, what was</p> <p>21 your response?</p> <p>22 A. I don't recall.</p> <p>23 Q. The City of Milwaukee, in this letter, was</p> <p>24 concerned, obviously, about the lien releases. And</p> <p>25 did the Office of the Monitor, I'm sorry, Office of</p>	<p style="text-align: right;">Page 43</p> <p>1 BY MR. TANTILLO:</p> <p>2 Q. In Recovery 1?</p> <p>3 A. Oh, I don't know.</p> <p>4 Q. I'm going to show you a document marked</p> <p>5 Government Exhibit Number 5.</p> <p>6 MR. TANTILLO: Would it be 5 or 6?</p> <p>7 MR. EPSTEIN: 5.</p> <p>8 THE VIDEOGRAPHER: 5.</p> <p>9 MR. PISTILLI: Is the highlighting on</p> <p>10 this document yours or is it . . .</p> <p>11 MR. TANTILLO: I don't know.</p> <p>12 MR. PISTILLI: Copy, please.</p> <p>13 MR. TANTILLO: Sure.</p> <p>14 (EXHIBIT NUMBER 5 WAS MARKED FOR IDENTIFICATION)</p> <p>15 (WITNESS REVIEWS DOCUMENT)</p> <p>16 BY MR. TANTILLO:</p> <p>17 Q. This document refers to a date of</p> <p>18 April 1st, 2014.</p> <p>19 A. Uh-huh.</p> <p>20 Q. Do you recall OMSO providing a date of</p> <p>21 April 1st, 2014 for the Recovery 1 population to be --</p> <p>22 A. I don't recall that personally, no.</p> <p>23 Q. -- in compliance.</p> <p>24 I'm going to show you what's marked as</p> <p>25 Government's -- excuse me, Plaintiffs' Exhibit</p>

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<p>1    Number 6.</p> <p>2            Will you hold them for me?</p> <p>3            (EXHIBIT NUMBER 6 WAS MARKED FOR IDENTIFICATION)</p> <p>4            MR. TANTILLO: I will show you that,</p> <p>5            Chris, before I show it to him.</p> <p>6            MR. EPSTEIN: Thank you.</p> <p>7            MR. TANTILLO: Yes, sir.</p> <p>8            MR. PISTILLI: Thanks.</p> <p>9            THE WITNESS: I'm going to review this</p> <p>10          with this one.</p> <p>11          (WITNESS REVIEWS DOCUMENT)</p> <p>12          BY MR. TANTILLO:</p> <p>13          Q. On the first page of Exhibit Number 6, do</p> <p>14          you see where it appears that there was a extension</p> <p>15          for Recovery 1 that's on 5/1 of '14?</p> <p>16          A. There was a -- I'm sorry, would you --</p> <p>17          Q. There was an extension that was provided</p> <p>18          by yourself in order for them to come into metrics</p> <p>19          testing?</p> <p>20          A. This is --</p> <p>21          MR. PISTILLI: Objection, foundation.</p> <p>22          THE WITNESS: Well, I don't -- this</p> <p>23          page relates to Metric 31. That was one of the</p> <p>24          additional metrics that were added after</p> <p>25          experience with the original 19 -- 29 metrics,</p>	<p>Page 46</p> <p>1          settlement for the borrowers in the sample who --</p> <p>2          whose loans had not been properly dealt with.</p> <p>3                 If a failure was widespread, a servicer</p> <p>4          would be required to determine the totality of the</p> <p>5          remediation required for all borrowers in the</p> <p>6          population affected by the metric.</p> <p>7          Q. Was there ever a borrower remediation that</p> <p>8          you filed or you courted regarding the Recovery 1</p> <p>9          loans?</p> <p>10         A. I -- any remediation activities for any</p> <p>11          servicer would have been publicly disclosed in our</p> <p>12          reports. The -- the failures did not have to do with</p> <p>13          particular portfolios, it had to do with the entire</p> <p>14          population, so it -- it -- so I can't really answer</p> <p>15          your question.</p> <p>16         Well, I can answer your question that</p> <p>17          it -- that the remediation would be for all loans in</p> <p>18          the population that was tested or for only in the --</p> <p>19          in the sample or in the case of widespread error in</p> <p>20          the total population.</p> <p>21         Q. So if the total number of loans, for</p> <p>22          example, was 8 million, hypothetically.</p> <p>23         A. Yes, all right.</p> <p>24         Q. But it's around that, let's say. If the</p> <p>25          pool of loans, let's say hypothetically Recovery 1,</p>
<p>1          rather, I said 19 earlier, 29.</p> <p>2                 I don't know -- I don't know that</p> <p>3          this -- well, I would not -- I don't know that I</p> <p>4          can agree with your characterization of this as</p> <p>5          an extension. This may well have been when we</p> <p>6          began testing, but I don't know that either.</p> <p>7          This was an added metric.</p> <p>8          BY MR. TANTILLO:</p> <p>9          Q. Mr. Smith, what constitutes borrower</p> <p>10         remediation when there's a potential violation within</p> <p>11         the settlements?</p> <p>12         A. If a servicer had an error rate on a</p> <p>13         metric that exceeded the error rate permitted by the</p> <p>14         consent judgments and they were established by a</p> <p>15         schedule in the consent judgments, there was a</p> <p>16         remediation obligation. It -- the amount of the --</p> <p>17         extent of the obligation depended on whether I</p> <p>18         determined separately that the failure to pass the</p> <p>19         test was a widespread error or merely -- or was not an</p> <p>20         error.</p> <p>21         So if there were a 5 percent error rate</p> <p>22         and the actual error rate determined by test was</p> <p>23         5.7 percent, that would not, as a rule, had been</p> <p>24         determined by me to be widespread. In that case,</p> <p>25         remediation would be done under the terms of the</p>	<p>Page 47</p> <p>1          was below the threshold error rate then --</p> <p>2          A. Well --</p> <p>3          MR. PISTILLI: Object to the form,</p> <p>4          lacks foundation, calls for speculation.</p> <p>5          THE WITNESS: -- each -- let me -- let</p> <p>6          me restate it.</p> <p>7          Each metric, there were 29 metrics, I</p> <p>8          misstated earlier and I apologize, it went on up</p> <p>9          to 33 in the case of Chase, ultimately. All but</p> <p>10         three of those metrics did not involve testing.</p> <p>11         They were so-called policy and procedures</p> <p>12         metrics. Those, you either passed or failed --</p> <p>13         the service either passed or failed by either</p> <p>14         having done what the metric required or not</p> <p>15         done, and it was pretty binary.</p> <p>16         For the metrics that required testing,</p> <p>17         sampling, in each case we would -- the servicer</p> <p>18         first, then reviewed by IRG, then reviewed by us</p> <p>19         twice, would determine a population of loans.</p> <p>20         Those loans could be extracted -- depending on</p> <p>21         the metric, could be extracted from any one of a</p> <p>22         number of systems that the servicer operated.</p> <p>23         There wasn't -- there weren't tests for</p> <p>24         particular systems, they were -- it was for</p> <p>25         loans covered by the metrics.</p>

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If -- if a failure was not determined to be widespread, if -- if the servicer exceeded the threshold error rate but not to an extent that caused me to determine it was widespread, and I did in every case determine that, one way or the other, the remediation would be given only to the loans in the sample where the -- where the -- where there had been -- where the company had not handled the loan -- or the servicer had not handled the loan appropriately.

If I determined the failure to be widespread, the servicer was required to look at the entire population of loans covered by the metric and to determine what the -- what the remediation was required for all loans in that population.

17 BY MR. TANTILLO:

18 Q. Does the settlement require you to go  
19 beyond sample testing if there's an indication that  
20 there may be a pattern of noncompliance?

21           A.     If there is a pattern of -- if I  
22 determined -- if -- if the servicer tells me there's a  
23 pattern of noncompliance or if I determine in some way  
24 there is a pattern of noncompliance, I have authority  
25 to do additional investigation.

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MR. PISTILLI: Objection, misstates prior testimony.

14 BY MR. TANTILLO:

15 Q. Was the threshold error rate applied on a  
16 metric-by-metric bases?

17 A. Yes.

18 Q. Okay. So it wasn't applied to a  
19 population as a whole?

20 MR. PISTILLI: Object to the form.

THE WITNESS: I don't understand -- I  
don't understand the question.

23 BY MR. TANTILLO:

24 Q. For example, let's say, going back to  
25 Metric 31.

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1           A.     Uh-huh.

2           Q.     If -- if they violate -- if they did -- if

3     they were within Metric 31 in terms of the sample that

4     was provided but perhaps they violated Metric 29, was

5     the -- the threshold error rate applied by each sample

6     or was it applied as a whole to all the loans?

7 MR. EPSTEIN: Objection to form

8 MR. PISTILLI: Join.

THE WITNESS: A population was pooled for each metric. A separate population was pooled for each metric, and the sample was drawn from each population separately and the testing was done in each case for that metric only.

14 BY MR. TANTILLO:

15 Q. Who was responsible for pulling together  
16 those sample pools?

17 A. The samples were drawn -- the  
18 populations -- the populations were determined by the  
19 operating management, reviewed by the IRG, and  
20 reviewed by us. The samples were generally randomized  
21 samples that were pooled using a software tool and it  
22 varied and I can't name them, but we named them in our  
23 reports. Each -- each sample was drawn by random,  
24 not -- not -- not selected. In other words, it was --  
25 the population was -- was developed and a randomized

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1 sample was drawn in a way we found satisfactory and  
2 reviewed. That's what -- and it was from that sample  
3 that the testing -- that sample was tested and then we  
4 determined whether the threshold error rate had been  
5 exceeded or not.

6 Q. If Chase had made a determination that a  
7 certain group of loans, let's say Recovery 1, was not  
8 subject to the servicing standards, would you have  
9 ever received a sample pool?

10 MR. PISTILLI: Objection.

11 MR. EPSTEIN: Objection to form.

THE WITNESS: Yeah. We received, in each case, populations developed by the company on bases that we have reviewed. We have gone through the -- the methodology they had used to -- to determine the populations because all this was done through computer query. And we would then -- as I follow again, I'm getting to be a broken record, but we would do the same thing, we would -- we -- once the population was agreed, the population would be pooled, the sample would be drawn from the population by randomization, and the testing would be done.

24 BY MR. TANTILLO:

Q. Let's turn to the RMBS settlement.

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<p>1           A. Uh-huh.</p> <p>2           Q. Did loans that were being credited</p> <p>3 pursuant to the RMBS settlement have to have an intact</p> <p>4 lien?</p> <p>5           A. At the -- yes, before the relief was</p> <p>6 given, yes.</p> <p>7           Q. And after they did a validation of an</p> <p>8 intact lien, at that point in time would the servicer</p> <p>9 release the lien?</p> <p>10          A. It depends on the form of relief they were</p> <p>11 using. The -- the -- the RMBS settlement, like the</p> <p>12 consent judgments that formed the National Mortgage</p> <p>13 Settlement, had a -- what was called a menu of relief</p> <p>14 options and it included a variety of -- of things.</p> <p>15 First lien mortgage modification or forgiveness,</p> <p>16 second lien mortgage modification or forgiveness,</p> <p>17 short sale assistance. There were a number of others,</p> <p>18 and, in fact, in the Chase matter, also included</p> <p>19 things like loans to first-time home buyers or</p> <p>20 included for credit. There was a list of things they</p> <p>21 could do and so there might have been some relief</p> <p>22 where a lien release was part of the relief, but it</p> <p>23 wasn't mandated.</p> <p>24          MR. PISTILLI: Just at this time, can I</p> <p>25 reassert, again, my continuing objection to this</p>	<p style="text-align: right;">Page 54</p> <p>1 loans are particularly applicable to our causes</p> <p>2 of action that are currently not stayed and</p> <p>3 without the background information as about what</p> <p>4 happened, we're -- all we're left with is the</p> <p>5 fact that liens were released.</p> <p>6            MR. PISTILLI: My continuing objection</p> <p>7 stands and we reserve all rights to seek</p> <p>8 appropriate sanctions from Judge Francis.</p> <p>9            MR. TANTILLO: Break? We're going to</p> <p>10 take a few-minute break.</p> <p>11          THE VIDEOGRAPHER: The time now is</p> <p>12 10:52 and we will be going off record. We're</p> <p>13 off record at 10:52.</p> <p>14          (RECESS TAKEN)</p> <p>15          THE VIDEOGRAPHER: The time now is</p> <p>16 11:15 a.m., and we are back on the record. You</p> <p>17 may begin.</p> <p>18          MR. TANTILLO: Before we begin, as we</p> <p>19 were reviewing our exhibits I noticed that we</p> <p>20 did have a privileged document that was from</p> <p>21 Chase counsel to, I guess, various employees at</p> <p>22 Chase. We have not used it, but I wanted to</p> <p>23 hand it over to Mr. Pistilli. And we'll,</p> <p>24 obviously, destroy that or any copies we have.</p> <p>25          MR. PISTILLI: Great.</p>
<p>1 line of questioning in that it blatantly, in my</p> <p>2 opinion, violates Judge Francis's order in this</p> <p>3 case limiting discovery.</p> <p>4          Again, I would invite counsel for</p> <p>5 Plaintiffs to make a proffer as to what</p> <p>6 conceivable relevance this line of questioning</p> <p>7 has to the commercial dispute between the</p> <p>8 parties as brought in Plaintiffs' tort and</p> <p>9 contract claims. I see absolutely no relevance</p> <p>10 to any of the issues in this case that are not</p> <p>11 subject to the discovery stay. I continue to</p> <p>12 believe that this entire line of questioning is</p> <p>13 in direct violation of Judge Francis's order.</p> <p>14          MR. TANTILLO: Mr. Pistilli, my clients</p> <p>15 were harmed by the various lien release</p> <p>16 processes that occurred because Chase was</p> <p>17 seeking consumer relief credit.</p> <p>18          MR. PISTILLI: Whether your clients</p> <p>19 were or weren't harmed by lien releases, your</p> <p>20 entire line of questioning to Mr. Smith has no</p> <p>21 relevance to either the fact of the harm or any</p> <p>22 other pleaded issue in your claims.</p> <p>23          MR. TANTILLO: We'd obviously beg to</p> <p>24 differ. The fact and the circumstance and the</p> <p>25 intent of why Chase was releasing my client's</p>	<p style="text-align: right;">Page 55</p> <p>1          MR. TANTILLO: Thank you. It's from</p> <p>2 Mr. Wick.</p> <p>3          MR. PISTILLI: Thank you.</p> <p>4          MR. TANTILLO: Chris, you okay for us</p> <p>5 to proceed?</p> <p>6          MR. PISTILLI: Yes, go ahead.</p> <p>7 BY MR. TANTILLO:</p> <p>8          Q. Mr. Smith, can you tell us what is the</p> <p>9 intact lien validation process?</p> <p>10         A. No.</p> <p>11         Q. As we stated earlier, there was a</p> <p>12 requirement for the liens to be intact, I guess, in</p> <p>13 order to receive credit. Was that for just the RMBS</p> <p>14 settlement or also for the NMS settlement as well?</p> <p>15         A. It was required -- determination that a</p> <p>16 lien was intact was required for some forms of relief</p> <p>17 in both the NMS and the RMBS settlement.</p> <p>18         Q. Were there instances in both settlements</p> <p>19 where a servicer could obtain credit if the loans were</p> <p>20 charged off?</p> <p>21         A. Yes. I believe so, yes.</p> <p>22         Q. What instances come to mind to you?</p> <p>23         A. Well, there was a form of relief, several</p> <p>24 forms of relief, where liens were released to -- that</p> <p>25 come to mind. There was actually a lien release form</p>

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<p>1 of relief in the NMS consent judgments. I'm not sure 2 that there was such a thing in -- I just don't 3 remember whether there's a similar one in Chase.</p> <p>4 There were a variety of -- in second lien 5 relief there was -- release of the lien was not always 6 required, it depended -- the bank could elect -- the 7 servicer could elect to do it or not. There was 8 some -- there was an option to do a modification of a 9 second lien loan.</p> <p>10 But in a substantial number of cases it 11 was easier for the servicers, frankly, to expunge the 12 lien and release -- expunge the loan, write it off, if 13 you call it, and release the lien. And there may have 14 been -- or there was a need to release the lien in 15 cases where there was a short sale.</p> <p>16 Q. Let's dig into that further. What were 17 the instances in which they were required to release a 18 lien in a short sale? And do you remember the 19 provision for that?</p> <p>20 MR. PISTILLI: Object to the form.</p> <p>21 THE WITNESS: Well, by its very nature 22 a short sale required that all liens on the 23 property be released.</p> <p>24 BY MR. TANTILLO:</p> <p>25 Q. What is the second lien extinguishment</p>	<p>Page 58</p> <p>1 a situation where we didn't require a waiver of 2 the deficiency. But I'm not -- I cannot tell 3 you right now that I remember with my own 4 knowledge whether that was required for all or 5 not.</p> <p>6 BY MR. TANTILLO:</p> <p>7 Q. Was it possible to do a loan modification 8 on loans in the RCD1 system?</p> <p>9 A. I don't know.</p> <p>10 Q. Were there instances in which a lien 11 release was considered a modification?</p> <p>12 A. My recollection is that modifications were 13 generally done as to first lien loans, and that a 14 modification generally did not release a lien, it 15 merely reduced the principal amount of and/or extended 16 the time of payment.</p> <p>17 Q. So you're not -- go ahead, I'm sorry.</p> <p>18 A. I will say, in addition, there were 19 situations where if -- if there was a first and second 20 lien loan, there were times when it was required to 21 modify both to give the borrower relief in terms of 22 payment burden.</p> <p>23 Q. And how would they achieve that, through 24 an application process?</p> <p>25 A. In general, yes. Although, again,</p>
<p>1 program, are you familiar with that?</p> <p>2 A. I'm not.</p> <p>3 Q. Are you familiar with the process of 4 sending letters to borrowers to say that we're 5 releasing your lien in order to obtain credit?</p> <p>6 A. Letters to borrowers notifying them of a 7 release of lien were included in some of the 8 documentation that we reviewed in order to validate 9 relief.</p> <p>10 Q. Do you know whether or not it was a 11 requirement that the debt actually be forgiven?</p> <p>12 A. Some forms of relief gave credit for 13 forgiveness of loan amounts. It depends on the form 14 of relief we're talking about.</p> <p>15 Q. Are there forms of relief that allow the 16 banks to continue to collect on the debt after they 17 release a lien or they send an extinguishment letter?</p> <p>18 MR. PISTILLI: Object to the form.</p> <p>19 THE WITNESS: In cases where we gave -- 20 my recollection is that in cases where we gave 21 credit for relief where a lien was released -- I 22 better take that back.</p> <p>23 There was -- there was a question of 24 whether a deficiency still remained or not. And 25 I don't want to generalize. I -- I can't recall</p>	<p>Page 59</p> <p>1 I -- yes.</p> <p>2 Q. Were there instances where an application 3 process was not used?</p> <p>4 A. I don't know. I don't recall.</p> <p>5 Q. What is the alternative foreclosure 6 process? Are you familiar with that?</p> <p>7 A. No.</p> <p>8 Q. Are you familiar with the anti-blitz 9 provisions of the various agreements?</p> <p>10 A. I'm aware of them, yes.</p> <p>11 Q. Could you tell us how those worked in -- 12 regarding to the --</p> <p>13 A. I will have a difficult time doing that, 14 because I don't believe any of the servicers availed 15 themselves of the anti-blitz provisions. To my -- I 16 don't recall one.</p> <p>17 Q. What is Regulation X?</p> <p>18 A. This is very hard for me to say this, I 19 don't know. I can't describe it to you right now.</p> <p>20 Q. Did -- did OMSO ever -- ever require the 21 servicers to release liens in order to be compliant 22 with Regulation X?</p> <p>23 A. OMSO didn't require servicers to do 24 anything with regard to relief. The servicers granted 25 relief and presented it, first of all, to their IRG</p>

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<p>1       for validation, then to us for validation.</p> <p>2       Q.     Did OMSO ever provide counsel regarding</p> <p>3       ways to be in compliance with Regulation X?</p> <p>4       A.     I'm not aware of that, no.</p> <p>5       (EXHIBIT NUMBER 7 WAS MARKED FOR IDENTIFICATION)</p> <p>6            MR. PISTILLI: So the same question</p> <p>7       about this document, it's got some yellow</p> <p>8       highlighting on certain portions. Was that</p> <p>9       highlighting applied by Plaintiffs' counsel?</p> <p>10          MR. TANTILLO: I don't know, Chris.</p> <p>11          MR. PISTILLI: So you're not sure what</p> <p>12       the yellow highlighting is?</p> <p>13          MR. TANTILLO: Actually, not.</p> <p>14          MR. PISTILLI: Okay. Just want that</p> <p>15       clear for the record.</p> <p>16   BY MR. TANTILLO:</p> <p>17          Q.     Mr. Smith, I'm handing you what's been</p> <p>18       marked as Plaintiffs' Exhibit Number 7. Could you</p> <p>19       please review that?</p> <p>20            (WITNESS REVIEWS DOCUMENT)</p> <p>21          Q.     Have you reviewed the document, Mr. Smith?</p> <p>22          A.     I have.</p> <p>23          Q.     Do you recall providing Chase, the</p> <p>24       servicer in this particular situation, providing them</p> <p>25       with approval or guidance to release the liens in</p>	<p>Page 62</p> <p>1       those people.</p> <p>2       Q.     Mr. Smith, what constitutes a de minimis</p> <p>3       violation pursuant to the settlements?</p> <p>4       A.     Well, de minimis is not a term of -- of</p> <p>5       art in the settlement, so I don't have an answer to</p> <p>6       that -- or a defined term, I should say.</p> <p>7       Q.     Are you aware of instances where various</p> <p>8       servicers would present to OMSO arguments to the</p> <p>9       degree that violation was quote/unquote de minimis</p> <p>10      and, therefore, not a violation of the agreements --</p> <p>11      or the judgments, excuse me?</p> <p>12      A.     Well, the discussions we would have had</p> <p>13      with servicers would be about whether they had</p> <p>14      exceeded the threshold error rate or not.</p> <p>15      Q.     Did you see your role as monitor as a</p> <p>16      regulatory function?</p> <p>17          MR. EPSTEIN: Objection to form.</p> <p>18          THE WITNESS: I saw my role as being a</p> <p>19       defined and specific one in the enforcement of</p> <p>20       an agreed consent judgment.</p> <p>21   BY MR. TANTILLO:</p> <p>22          Q.     I'm going to turn back to -- you</p> <p>23       mentioned, I believe, three or four metrics that were</p> <p>24       binary in scope. Even though you -- you --</p> <p>25          A.     Yeah, right.</p>
<p>1       order to be compliant with the Regulation X?</p> <p>2       A.     No.</p> <p>3       Q.     Do you know anybody in your office who</p> <p>4       would have provided that kind of guidance?</p> <p>5       A.     I'm not aware of anybody who did.</p> <p>6       Q.     And that particular document does state</p> <p>7       that through speaking with somebody in your office</p> <p>8       they were provided guidance to do that?</p> <p>9            MR. EPSTEIN: Objection, was that a</p> <p>10       question?</p> <p>11          MR. TANTILLO: Yes, sir.</p> <p>12          MR. EPSTEIN: You can answer that</p> <p>13       question.</p> <p>14          THE WITNESS: The answer is that I</p> <p>15       don't know that we did this, and I don't know --</p> <p>16       if we did it, I don't know who did it, who gave</p> <p>17       this alleged guidance.</p> <p>18   BY MR. TANTILLO:</p> <p>19          Q.     Would it -- would the individuals</p> <p>20       potentially be outside counsel that we've spoken about</p> <p>21       before either Mr. Josh Stein or Martha, was it</p> <p>22       Svobada?</p> <p>23          A.     Svobada.</p> <p>24          Q.     Svobada, excuse me.</p> <p>25          A.     If this was given, it was given by one of</p>	<p>Page 63</p> <p>1       Q.     When you're -- when the OMSO was</p> <p>2       evaluating those metrics, were those metrics done on a</p> <p>3       entire loan population, or were they done on various</p> <p>4       pools, for example, maybe MSP, VLS, Recovery 1?</p> <p>5          MR. PISTILLI: Objection to form.</p> <p>6          MR. EPSTEIN: Objection to form.</p> <p>7          THE WITNESS: The policies and</p> <p>8       procedures metrics that I can remember were</p> <p>9       metrics with regard to the entire mortgage</p> <p>10      servicing operation of the -- each servicer.</p> <p>11   BY MR. TANTILLO:</p> <p>12          Q.     So either yes or no, they would -- they</p> <p>13       were in compliance or they weren't regarding those?</p> <p>14          A.     Yes.</p> <p>15          Q.     For example, somebody -- a single point of</p> <p>16       contact or --</p> <p>17          A.     There was -- single point of contact was</p> <p>18       one, as I recall it. There were two others and,</p> <p>19       I'm -- third-party vendors was one, and I forgot the</p> <p>20       third.</p> <p>21          Q.     Do you know if the Recovery 1 system of</p> <p>22       records was able to have a single point of contact?</p> <p>23          MR. EPSTEIN: Objection to form.</p> <p>24          MR. PISTILLI: Join.</p> <p>25          THE WITNESS: I only know what we</p>

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<p style="text-align: right;">Page 66</p> <p>1        tested, and what we tested was overall policy 2        with -- with the -- all servicers. 3        BY MR. TANTILLO: 4        Q.     Did you have a custom or customary way in 5        which you would work with various IRGs, various 6        servicers, to negotiate the work plans? 7        A.     Well, first and foremost, we negotiated 8        the basic work plan template with all servicers 9        together. The entire -- well, the protocols that we 10      employed -- by "we" I mean myself and my colleagues 11      and -- and counsel, particularly counsel -- was to 12      negotiate a broad overall set of protocols under which 13      we would implement our monitoring function. We fine 14      tuned, somewhat, in the case of each servicer to the 15      extent necessary to reflect differences in their 16      systems. 17        Q.     And was it for OMSO to determine who was 18      in compliance with these various servicing standards 19      of metrics in the way you were talking about? 20        MR. EPSTEIN: Objection to form. 21        THE WITNESS: Well, as I said to you 22      before, we determined compliance with the 23      servicing standards through the metrics testing 24      I described previously.</p>	<p style="text-align: right;">Page 68</p> <p>1        question. 2        BY MR. TANTILLO: 3        Q.     The liens, obviously, at RC -- excuse me. 4        The liens at RCV1 were released. Was 5        the -- was it possible for Chase, for example, to 6        obtain credit on these lien in both settlements? 7        MR. EPSTEIN: Objection to form. 8        MR. PISTILLI: Join. 9        THE WITNESS: I can't answer that 10      question, because it's -- it's -- it was -- 11      Chase sought -- and there's a public record on 12      this. We have -- we have published -- a 13      published report to the court on consumer relief 14      for all servicers, and I've published public 15      reports about all servicers and the forms of 16      relief they sought and the amounts they were 17      granted is public. 18        And that's -- the source of those loans 19      were -- were looked at at the time we did the 20      validation work. But it was a question -- what 21      we reported on was the overall result. If 22      you're asking whether the same loan could be 23      credited in both, the answer -- for the same 24      relief, the answer to that would be no.</p>
<p style="text-align: right;">Page 67</p> <p>1        BY MR. TANTILLO: 2        Q.     Did OMSO require the servicers to undergo 3        what may be called a lien scrub? 4        A.     No. 5        Q.     So that was something that the servicers 6        would do on their own? 7        MR. PISTILLI: Objection, foundation. 8        THE WITNESS: I don't know. 9        BY MR. TANTILLO: 10      Q.     What was the sequence of events or 11      requirements to enable a loan that, let's say, was 12      charged off to obtain credits under the various 13      settlements? 14      A.     It would depend. It would depend on the 15      nature of the loan itself, when the relief was 16      granted, what category of relief was being sought. It 17      was -- and it was a variety of -- and whether the 18      relief had been granted appropriately and credited -- 19      and properly credited. 20      Q.     Was it possible for RCV1 loans or liens to 21      be intact and then released at the same time? Were 22      there -- was that a possibility? 23      MR. PISTILLI: Objection to form. 24      MR. EPSTEIN: Objection to form. 25      THE WITNESS: I don't understand the</p>	<p style="text-align: right;">Page 69</p> <p>1        BY MR. TANTILLO: 2        Q.     So it was not possible for one loan 3        number, let's say 1234, to receive credit in the 4        National Mortgage Settlement and then 1234 to receive 5        credit in the RMBS settlement? 6        MR. PISTILLI: Objection, misstates 7        prior testimony. 8        THE WITNESS: This is all very 9        hypothetical. It would depend, frankly. There 10      were some loans as -- if a short -- if a second 11      lien was expunged in connection with a short 12      sale, there may have been instances where short 13      sale relief was granted and second lien 14      expungement relief was granted. And it's 15      possible it could have been the two different 16      settlements, but I -- I don't know whether it 17      was or not. 18      BY MR. TANTILLO: 19      Q.     Were bankruptcy loans subject to consumer 20      relief credit? 21      A.     Loans of debtors in bankruptcy could 22      receive consumer relief credit. 23      Q.     And were you aware of any RCD1 loans or 24      Recovery 1 system loans that received credit that were 25      in bankruptcy?</p>

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<p>1           A. I'm not aware of that, no. That's to say 2 I don't know.</p> <p>3           Q. With regards to the Recovery 1 system of 4 loans, did you ever at any time notify other 5 regulators such as Department of Justice or the 6 Consumer Financial Protection Bureau of the fact that 7 the Recovery 1 loans were not being serviced?</p> <p>8           MR. EPSTEIN: Objection to form.</p> <p>9           MR. PISTILLI: Join.</p> <p>10          THE WITNESS: No.</p> <p>11         BY MR. TANTILLO:</p> <p>12         Q. Was there a reason why you didn't do so?</p> <p>13         MR. EPSTEIN: Same objection.</p> <p>14         THE WITNESS: I didn't -- your question 15 is about did I know they weren't being serviced, 16 and the answer is I didn't know that.</p> <p>17         BY MR. TANTILLO:</p> <p>18         Q. You previously stated that only loans that 19 have an intact lien can be serviced; is that correct?</p> <p>20         MR. EPSTEIN: Objection to form.</p> <p>21         THE WITNESS: What was said was a 22 predicate of the servicing -- the application of 23 servicing standards was that there be, yeah, an 24 intact lien, that it be -- there be a mortgage. 25 It was a mortgage settlement, and so there had</p>	<p>Page 70</p> <p>1         relief?</p> <p>2         A. It was --</p> <p>3           MR. PISTILLI: Object to the form.</p> <p>4           THE WITNESS: It was -- it was possible 5 to do that.</p> <p>6         BY MR. TANTILLO:</p> <p>7         Q. And if they had released the liens prior 8 to the beginning of the settlement, wouldn't they have 9 been able to obtain consumer relief on those releases?</p> <p>10        A. No.</p> <p>11        Q. Did you see a equivalent system of records 12 similar to Recovery 1 with other banks?</p> <p>13        A. We did a thorough review of the systems of 14 all of the servicers as part of our -- our -- 15 establishment of our protocols, our infrastructure. I 16 don't recall the structure, myself, of any of the 17 other servicers.</p> <p>18        Q. So you weren't aware of other servicers 19 having a system of records of charge-off loans 20 or . . .</p> <p>21        Let's leave the question.</p> <p>22        MR. PISTILLI: I object to the form, 23 misstates prior testimony.</p> <p>24        THE WITNESS: Well, each of the 25 servicers charged off loans, and they were</p>
<p>1         to be a mortgage.</p> <p>2         BY MR. TANTILLO:</p> <p>3         Q. So under that theory, loans that were 4 within the Recovery 1 system that were lien released 5 could have not received consumer relief credit?</p> <p>6         MR. PISTILLI: Object to the form, 7 misstates prior testimony, calls for a legal 8 conclusion.</p> <p>9         THE WITNESS: That, it depends on 10 when -- I don't think I can say that, no. If -- 11 if there was -- if there was a valid lien that 12 was released, a servicer could obtain credit for 13 the release of that loan. Now, it wasn't a 14 significant amount of release. It was -- if 15 that was all there was, it was pretty -- it was 16 a very, very -- on the scoring system was a very 17 small amount of credit.</p> <p>18         You had to have an existing loan, an 19 intact loan, before the relief was given and 20 claimed, and the -- and then you could claim the 21 relief if it were within -- granted within the 22 time periods.</p> <p>23         BY MR. TANTILLO:</p> <p>24         Q. So if the lien was intact during the time 25 periods of the settlement, were they able to obtain</p>	<p>Page 71</p> <p>1         accounted for in a system that each of them had. 2 But the precise nature of those systems and how 3 they did it would vary between servicers, 4 probably. I say "probably," again, because I 5 don't recall the specifics.</p> <p>6         BY MR. TANTILLO:</p> <p>7         Q. Were you aware of instances where prior to 8 the entry of the starting date of the NMS and the RMBS 9 settlements that servicers would release loans so they 10 would not be subject to metric testing?</p> <p>11        A. I don't remember specifics. We -- in each 12 case of each servicer we did a -- we did a careful 13 review to make sure that they -- we did not give 14 credit for that kind of situation.</p> <p>15        Q. So in the event that they had done that, 16 they would not receive credit for those loans?</p> <p>17        A. They should not receive credit.</p> <p>18        Q. Would you -- would it have surprised you 19 if various servicers had released liens prior to entry 20 into the National Mortgage Settlement?</p> <p>21        A. I don't -- well, I don't think "surprised" 22 is the right word. Our job was to determine that we 23 did not give credit in those circumstances.</p> <p>24        Q. And let me ask you, how would you do that? 25 How would you know if a servicer had previously</p>

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<p style="text-align: right;">Page 74</p> <p>1 released a lien and then subsequently tried to obtain 2 credit for it?</p> <p>3 A. All the information we had that we used, 4 and there was an extensive protocol developed with 5 each servicer to determine whether and how much credit 6 should be given, was gone through in each case. But 7 in each case, it was determined with regard -- by 8 reference to the system of record itself.</p> <p>9 Q. Was it possible to compare the loan data 10 based on loan numbers, or how was that done? Was 11 it -- was it done through a particular identification 12 requirement?</p> <p>13 A. Both.</p> <p>14 MR. PISTILLI: Object to the form. 15 THE WITNESS: Both.</p> <p>16 BY MR. TANTILLO:</p> <p>17 Q. It was done through loan number and what 18 other method?</p> <p>19 A. We had -- it was mainly through loan 20 number. But we took careful steps to assure that we 21 knew -- we -- to identify a loan and to follow its 22 history through the servicer's system of record. But 23 we -- and we would rely on the -- and if necessary, 24 and I don't know in this case what else we -- whether 25 we did something else, I don't remember that we did --</p>	<p style="text-align: right;">Page 76</p> <p>1 BY MR. TANTILLO: 2 Q. Mr. Smith, have you reviewed Plaintiffs' 3 Exhibit Number 7?</p> <p>4 MR. EPSTEIN: 8. 5 THE WITNESS: 8. 6 MR. TANTILLO: 8, I apologize.</p> <p>7 BY MR. TANTILLO: 8 Q. Was this the type of certification that 9 you would receive?</p> <p>10 A. This appears to be a certification that -- 11 it's actually not addressed to me, but it does refer 12 to the National Mortgage Settlement.</p> <p>13 Q. Was this similar to the types of 14 certifications that you would receive from time to 15 time?</p> <p>16 A. This is a certification we received. 17 Q. And within that certification it, 18 obviously, talks about various things that they did in 19 order to comply with the settlement, obviously, in 20 terms of intact lien validations. Was that a 21 requirement that your office had in order for them to 22 ensure the various systems of record were being 23 reviewed and, obviously, in terms of the fact that 24 there was actually an intact lien?</p> <p>25 MR. EPSTEIN: Objection to form.</p>
<p style="text-align: right;">Page 75</p> <p>1 perhaps, require additional information to assure 2 ourselves that the loan was intact, for example, and a 3 bunch -- and a number of other things. Then determine 4 how much relief had been given and -- and whether the 5 credit was proper -- the amount of the credit was 6 proper.</p> <p>7 Q. And how would a servicer either notify you 8 or certify that, for example, a lien was intact, as 9 just one example?</p> <p>10 A. I can't give you details about that. It 11 was -- we would do it by reference, again, through our 12 agreed protocols, to the corporate records of the 13 servicer through which we would determine that the 14 lien had been intact.</p> <p>15 Q. Did the various servicers require -- did 16 you require them to file certifications from various 17 individuals?</p> <p>18 A. There were circumstances where we did. I 19 don't recall all of them.</p> <p>20 Q. And why would they need to file a type of 21 certification with the --</p> <p>22 A. It depends. It varies. And I don't 23 recall the details.</p> <p>24 (EXHIBIT NUMBER 8 WAS MARKED FOR IDENTIFICATION)</p> <p>25</p>	<p style="text-align: right;">Page 77</p> <p>1 MR. PISTILLI: Objection to form. 2 THE WITNESS: I'm not going to 3 speculate on this. It's, clearly, we had -- 4 there was a purpose for which we had -- we may 5 well have sought assurance that liens had been 6 released. It is not clear to me -- well, it 7 says -- this probably does refer -- I don't want 8 to speculate -- to eCredit as a specific kind 9 of -- of consumer relief credit.</p> <p>10 BY MR. TANTILLO:</p> <p>11 Q. What was --</p> <p>12 A. Second lien -- yeah, okay, for second 13 lien -- second lien extinguishments. The issue was 14 how to establish for second liens that had been 15 extinguished -- where they claimed credit for an 16 extinguishment of a second lien, how to -- how to 17 determine that the lien had been valid -- intact to 18 start and had, then, been completely -- well, had been 19 released.</p> <p>20 Q. And what was the concern for OMSO 21 regarding that?</p> <p>22 MR. PISTILLI: Object to the form. 23 THE WITNESS: It was merely -- it was 24 merely a form of evidence to assure ourselves 25 that the actions that had been taken under</p>

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<p>1       Section 2E of the consumer relief menu or, 2       perhaps, the consumer relief exhibit had been 3       done.</p> <p>4     BY MR. TANTILLO:</p> <p>5       Q.   And in order for a servicer to obtain 6       relief under 2E, what requirements were required?</p> <p>7       A.   I'd have to look at the -- at the, you 8       know, the schedule again. I'm reasonably confident 9       that this is -- this regards seeking credit for the 10      expungement of a loan. And I don't recall whether 11      it's -- whether this -- this relief relates also to 12      the -- how far past due it was. 2E, as I recall it, 13      was 180 days past due, and the relief was -- the 14      amount of relief was fairly small.</p> <p>15      Q.   Was there a provision in either the 16     National Mortgage Settlement or in the RMBS settlement 17     where a servicer could obtain relief under what this 18     document calls HUD Consumer Relief Program?</p> <p>19      A.   The National Mortgage Settlement contained 20      a menu -- well, first of all, it had a -- it had a -- 21      an exhibit that described in detail the kinds of 22      consumer relief for which credit would be given. It, 23      then, had a menu attached to that exhibit which gave 24      some additional detail and also disclosed how much -- 25      how much credit would be given for each category of</p>	<p>Page 78</p> <p>1     relief?</p> <p>2       A.   May have been, I don't recall.</p> <p>3       (EXHIBIT NUMBER 9 WAS MARKED FOR IDENTIFICATION)</p> <p>4       MR. EPSTEIN: Thank you.</p> <p>5       MR. TANTILLO: Yes, sir.</p> <p>6       THE WITNESS: I take it you want me to 7       review this?</p> <p>8     BY MR. TANTILLO:</p> <p>9       Q.   Yes, sir, I apologize.</p> <p>10      (WITNESS REVIEWS DOCUMENT)</p> <p>11      A.   Yes.</p> <p>12      Q.   Mr. Smith, do you recognize Government's 13      Exhibit Number 9 -- I'm sorry, as Government --</p> <p>14      A.   I'm sorry?</p> <p>15      Q.   Sorry, Prosecutor.</p> <p>16      Do you remember -- have you -- have you 17      reviewed that document -- I'm sorry, have reviewed --</p> <p>18      A.   Yes.</p> <p>19      Q.   -- Plaintiffs' Exhibit Number 9?</p> <p>20      A.   I have.</p> <p>21      Q.   And it mentions in there, once again, this 22      HUD Consumer Relief Program.</p> <p>23      MR. EPSTEIN: Wait, wait for a 24      question.</p> <p>25      THE WITNESS: Thank you.</p>
<p>1       relief.</p> <p>2       Q.   However, was there a particular part of -- 3       either of the RMBS settlement or the National Mortgage 4       Settlement that related to something called HUD 5       Consumer Relief?</p> <p>6       MR. PISTILLI: Objection.</p> <p>7       THE WITNESS: I don't recall -- I don't 8       recall that it was.</p> <p>9       MR. PISTILLI: And that -- the 10      objection was it calls for a legal conclusion.</p> <p>11     BY MR. TANTILLO:</p> <p>12      Q.   Regarding the RMBS settlements, was Chase 13      able to receive credit for lien releases in what's 14      called hardest hit areas?</p> <p>15      A.   Chase was able to receive credit for -- I 16      thought it was -- my recollection is for credit 17      extended in hardest hit areas.</p> <p>18      Q.   And "credit extended" meaning what?</p> <p>19      A.   Meaning new loans.</p> <p>20      Q.   New loans?</p> <p>21      A.   Yes. Or -- but I -- again, I'd -- I would 22      rather refer to the document itself. There was -- 23      there was credit allowed for relief in hardest hit 24      areas.</p> <p>25      Q.   And was a lien release part of that</p>	<p>Page 79</p> <p>1     BY MR. TANTILLO:</p> <p>2       Q.   The HUD Consumer Relief Program, do you 3       know what they're talking about here?</p> <p>4       A.   I believe that they are talking about the 5       RMBS settlement. They distinguished between the NMS 6       settlement which they called the DOJ settlement and 7       the RMBS settlement which they called the HUD 8       settlement. They called the internal review group in 9       the NMS the internal review group -- I've been 10      chastised by Mr. Epstein about this -- the IRG. And 11      they called it the -- it's equivalent in the Chase 12      document, the HRG for HUD.</p> <p>13      Q.   So, once again, they -- you were -- your 14      office was requiring them to ensure that they had lien 15      validations over various periods of time, because 16      it's -- obviously, this is a different date than 17      Plaintiffs' Exhibit Number, I believe, 8?</p> <p>18      MR. PISTILLI: Objection to form and --</p> <p>19      MR. EPSTEIN: Objection to form.</p> <p>20      THE WITNESS: Well, it's --</p> <p>21      MR. PISTILLI: -- also lacks 22      foundation.</p> <p>23      THE WITNESS: This was a document, 24      clearly, delivered in -- well, clearly, probably 25      delivered in connection with the RMBS settlement</p>

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<p>1 and deals with the validation of liens. 2 BY MR. TANTILLO: 3 Q. And under the RMBS settlement, how -- 4 obviously, there was a menu of options that -- that 5 Chase had to obtain credit. One of those menu options 6 was releasing the first lien? 7 A. Although, it's -- in -- in almost every 8 case in almost every settlement first lien loans were 9 modified. There may have been some cases where a 10 first lien was expunged, but they're very few. Most 11 of the -- most of the expungement activity was for 12 second lien loans.</p> <p>13 (EXHIBIT NUMBER 10 WAS MARKED FOR IDENTIFICATION) 14 MR. PISTILLI: Same question. The 15 yellow highlighting on this document, do you 16 know where that comes from? 17 MR. TANTILLO: I don't, but I'll make 18 sure that it doesn't happen again. 19 (WITNESS REVIEWS DOCUMENT) 20 BY MR. TANTILLO: 21 Q. Mr. Smith, have you reviewed Plaintiffs' 22 Exhibit Number 10? 23 A. Yes. 24 Q. Regarding this document, it states that: 25 (Reading)</p>	<p>Page 82</p> <p>1 A. As previously -- as I have previously 2 testified, there was a determination to include 3 Recovery 1 loans in metrics testing if they had, 4 according to the documentation, if they had an extent 5 lien, an existing lien. 6 Q. So long as there was not an extent lien, 7 the lien you released, these loans would have not have 8 been subject to metrics testing? 9 A. That's correct. 10 (EXHIBIT NUMBER 11 WAS MARKED FOR IDENTIFICATION) 11 MR. PISTILLI: Same question regarding 12 the yellow highlighting, and I assume the same 13 answer unless you tell me otherwise. 14 MR. TANTILLO: It's the same answer, 15 Mr. Pistilli. But as I assure you, it won't 16 happen again. 17 MR. PISTILLI: Yellow highlighting is 18 not a problem, I just want to establish my 19 record that the document that's being shown has 20 been changed from the version in which it was 21 produced. 22 (WITNESS REVIEWS DOCUMENT) 23 BY MR. TANTILLO: 24 Q. Mr. Smith, have you had a chance to review 25 Exhibit Number 11?</p>
<p>1 There is approximately 699,000 2 loans that are still in the Recovery 1 3 on or about October 1st of 2014. 4 Was there a directive by your office to 5 release these liens? 6 MR. PISTILLI: Object to the form. 7 THE WITNESS: As I believe I said 8 before, I don't know that we directed any 9 release of liens. There may have been an 10 agreement to -- for release of liens. I don't 11 know what purpose this -- this certification -- 12 or this document has been generated for. If -- 13 some prior exhibits discussed an agreement 14 regarding inclusion or noninclusion in metrics 15 testing, but it's not clear to me why this was 16 prepared. 17 BY MR. TANTILLO: 18 Q. Did the -- do you recall whether or not 19 the Office of Mortgage Settlement required Chase to 20 bring the entire Recovery 1 population in on 21 September 30th of 2014? 22 A. I do not recall that. 23 Q. Was there a period of time in which your 24 office counseled, obviously not directed, Chase to 25 bring these loans into metric testing?</p>	<p>Page 83</p> <p>1 A. Yes. 2 Q. Does that document in any way refresh your 3 recollection at all about the inclusion of these loans 4 into metrics testing? 5 A. As regards what we did, the answer is no. 6 (EXHIBIT NUMBER 12 WAS MARKED FOR IDENTIFICATION) 7 MR. PISTILLI: This is my copy. 8 MR. TANTILLO: Let you label it. 9 MR. PISTILLI: Same observation 10 regarding the highlighting of the document. 11 MR. TANTILLO: I'll have the same 12 response. 13 MR. PISTILLI: Is this the same as 14 Exhibit 5, Counsel? 15 MR. EPSTEIN: I was thinking -- 16 THE WITNESS: This looks very similar 17 to a document we've already gone over. 18 MR. EPSTEIN: It is. 19 MR. TANTILLO: I apologize. 20 Yes, it is, sir. 21 BY MR. TANTILLO: 22 Q. Regarding -- I'm sure you just reviewed 23 this document again. 24 A. Well, actually not. 25 Q. Oh, Number 12. All right. I'll let you</p>

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<p>1 take a look, Mr. Smith.</p> <p>2 (WITNESS REVIEWS DOCUMENT)</p> <p>3 A. Yes, all right.</p> <p>4 Q. Mr. Smith, this document refers to an</p> <p>5 extension of a date and to April 1st of 2014. Do you</p> <p>6 recall that at all?</p> <p>7 A. No.</p> <p>8 Q. Do you know who in your office would have</p> <p>9 provided an extension?</p> <p>10 A. Well, I would have done it on the basis of</p> <p>11 discussion with counsel.</p> <p>12 Q. And that would have been either somebody</p> <p>13 from this office, Poyner Spruill, or was it</p> <p>14 Leatherwood?</p> <p>15 MR. EPSTEIN: Smith Moore.</p> <p>16 THE WITNESS: Smith Moore Leatherwood,</p> <p>17 yeah.</p> <p>18 BY MR. TANTILLO:</p> <p>19 Q. And beyond those individuals, would you</p> <p>20 have also asked your third-party servicers, the people</p> <p>21 at BDO or Grant Thornton --</p> <p>22 A. No.</p> <p>23 Q. -- about that decision?</p> <p>24 A. No.</p> <p>25 Q. Now, was it customary or common for your</p>	<p>Page 86</p> <p>1 IRG representatives of the servicer, or could you be</p> <p>2 in direct contact with people at the line of business</p> <p>3 level?</p> <p>4 MR. PISTILLI: Object to the form.</p> <p>5 MR. EPSTEIN: And, again, by "you" you</p> <p>6 mean Joe Smith, OMSO and all affiliated people?</p> <p>7 MR. TANTILLO: Yes, sir.</p> <p>8 THE WITNESS: In most -- in the</p> <p>9 majority of cases my colleagues were in contact</p> <p>10 with the internal review groups, the people</p> <p>11 outside the operation. There were some meetings</p> <p>12 where my operational people met with both the</p> <p>13 IRG and the servicer operations personnel. But</p> <p>14 that was to iron out tech -- any technical --</p> <p>15 those were very technical meetings, iron out</p> <p>16 technical issues.</p> <p>17 BY MR. TANTILLO:</p> <p>18 Q. So would it be fair to say, generally, you</p> <p>19 were in communication with representatives of the</p> <p>20 servicers' IRG?</p> <p>21 A. Yes. In general, yes.</p> <p>22 Q. Now, were you aware of any sort of cross</p> <p>23 communication with sort of the IRG and the line of</p> <p>24 business people in relation to the duties to fulfill</p> <p>25 these settlements?</p>
<p>1 office to be in direct contact with the servicer</p> <p>2 regarding issues like these?</p> <p>3 A. We were in contact with all servicers on a</p> <p>4 regular basis. First of all, we did -- the validation</p> <p>5 process itself had us in almost continuous contact</p> <p>6 with the servicers. If there were issues of policy,</p> <p>7 we, generally, dealt with all of them together, not</p> <p>8 individually.</p> <p>9 Q. Was there a particular flow of information</p> <p>10 and how it would reach to you? Would it go from the</p> <p>11 IRG to BDO to Grant Thornton to you, or was there a</p> <p>12 way that the servicers could contact you directly and</p> <p>13 ask these sorts of questions about metrics testing?</p> <p>14 MR. EPSTEIN: Well, objection to form.</p> <p>15 By "you" do you mean you Joe Smith, or do you</p> <p>16 mean OMSO?</p> <p>17 MR. TANTILLO: You Joe Smith and OMSO.</p> <p>18 THE WITNESS: There was a constant flow</p> <p>19 of discussion about issues regarding the</p> <p>20 implementation of the settlement. And the</p> <p>21 initial contacts could have come either --</p> <p>22 probably would have -- could have come through a</p> <p>23 number of those channels you just mentioned.</p> <p>24 BY MR. TANTILLO:</p> <p>25 Q. Now, were you only able to interact with</p>	<p>Page 87</p> <p>1 MR. EPSTEIN: Objection to form.</p> <p>2 MR. PISTILLI: Join.</p> <p>3 THE WITNESS: There did have to be</p> <p>4 contact between the IRG and the -- and the --</p> <p>5 and the management to assure that the -- that</p> <p>6 the management understood what it was supposed</p> <p>7 to do, because the initial presentation of</p> <p>8 information was from the management's</p> <p>9 information. So there were contacts.</p> <p>10 BY MR. TANTILLO:</p> <p>11 Q. As you understand it and from your own</p> <p>12 experience, was the data that you were receiving from</p> <p>13 the various servicers as well as Chase, in particular,</p> <p>14 was that being done in an independent way with --</p> <p>15 inside the bank or the servicer, or was it being drawn</p> <p>16 from the management and line of business?</p> <p>17 MR. PISTILLI: Objection to form.</p> <p>18 MR. EPSTEIN: Objection to form.</p> <p>19 THE WITNESS: All information that was</p> <p>20 used to develop populations, to develop the</p> <p>21 background information on the basis of which</p> <p>22 both monitoring was done and consumer relief was</p> <p>23 done, was developed through management</p> <p>24 information systems that were under control of</p> <p>25 the management. There was contact between the</p>

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<p>1        IRG and the management to determine the 2        populations were correctly defined and that the 3        populations were correctly pooled and the -- and 4        to determine -- and there were also issues when 5        the IRG found, and this was for all servicers as 6        they often -- well, not often, but sometimes 7        did, that a loan had not passed, was not able -- 8        for metrics testing had not passed.  9        There were discussions between the -- 10      the IRG and the servicer and management about 11      whether that was a correct determination or not. 12      And we reviewed all that. I mean, we were aware 13      of those conversations. And then we did our own 14      validation which was entirely separate from 15      either of those two entities.</p> <p>16 BY MR. TANTILLO:</p> <p>17 Q. The samples that you just spoke of, was 18 there a certain percentage of loans that were sampled 19 from various buckets or various systems of record, or 20 was it just --</p> <p>21 A. What --</p> <p>22 MR. EPSTEIN: Let him finish his 23 question.</p> <p>24 BY MR. TANTILLO:</p> <p>25 Q. -- or hypothetically 1 percent of all loans in Chase's system of records.</p>	<p>Page 90</p> <p>1        ourselves and my people who know this stuff satisfied 2        themselves, that the samples were drawn in a random 3        method from a properly -- as far -- as best we could 4        tell a properly determined population, and the test -- 5        the testing was then applied to that random sample.</p> <p>6        Q. Understood.</p> <p>7        Was there a certain percentage that was 8        used?</p> <p>9        A. It -- the number depended -- no. The 10      short answer to that is no.</p> <p>11      Q. Was it proportionally done by the number 12      of loans that were in the population?</p> <p>13      A. Yes.</p> <p>14      Q. And let's move to consumer relief. Was a 15      similar type of sampling process used for consumer 16      relief?</p> <p>17      A. In consumer relief the management would 18      assert that it had given relief on a defined number of 19      loans which I guess you would also call a -- a 20      population. It would be divided by forms of relief. 21      So first lien relief, they would submit. That was one 22      population. Second lien relief or expungement is 23      another population. Short sales and other was a third 24      population.</p> <p>25        And a statistically valid random sample</p>
<p>1        loans in Chase's system of records.</p> <p>2        MR. PISTILLI: Object to the form.</p> <p>3        THE WITNESS: I will need you to be 4        more specific about that. Are we talking about 5        metrics testing or consumer relief?</p> <p>6 BY MR. TANTILLO:</p> <p>7        Q. I'm talking about metrics testing, and 8        then we can go to consumer relief.</p> <p>9        In terms of metrics testing, when you 10      received a sample, do you know the sample size in 11      terms of percentages that were used in order to 12      conduct the metrics testing?</p> <p>13      A. Yes.</p> <p>14      Q. And what was that sample size?</p> <p>15      A. The sample size would depend on the 16      population, the number of total loans in the 17      population. The sample was then drawn based on an 18      agreed protocol between the operating management, the 19      IRG and the SPF and PPF, my people, to -- to derive a 20      random -- randomized sample -- statistically valid 21      randomized sample from the population for the metric 22      in question.</p> <p>23        And that the statistical analysts had an 24      agreed protocol which is apparently is -- and this is 25      not my field, but I was satisfied and we satisfied</p>	<p>Page 91</p> <p>1        was drawn for each of those separate populations, and 2        it was -- it was tested to determine whether the loan 3        was an appropriate loan for relief of any kind or of 4        the kind given, whether the kind of relief given was 5        given within the time frame for which was authorized 6        and -- and was done in accordance with the 7        requirements of the settlement. There were 8        requirements about what kinds of loans could be 9        included and how much relief -- how the relief had to 10      be given.</p> <p>11        And the third thing was, had the -- had 12      the management and the IRG given the proper amount of 13      credit with regard to each of the loans for which 14      relief had been granted. And if, in this case, the 15      error -- the total error rate for any of those 16      populations exceeded 1 percent, they would turn -- 17      they were returned and not -- credit was not given for 18      the entire population. They had to do it over. 19      That's for all servicers.</p> <p>20      Q. Did OMSO ever receive from a servicer all 21      of the raw data of every single loan that, let's say 22      Chase for example, took credit for?</p> <p>23      A. I don't know what you mean.</p> <p>24      Q. Do you have in your possession or does one 25      of your third-party servicer-type people, do they have</p>

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<p style="text-align: right;">Page 94</p> <p>1 in their possession a list of every single lien for 2 which Chase took credit?</p> <p>3 A. Chase has that information.</p> <p>4 Q. But you do not?</p> <p>5 A. I do not believe we have it now.</p> <p>6 Q. Was there a point in time when you did 7 have that information?</p> <p>8 A. We never took possession of information, 9 data, specific information regarding any of the loans. 10 We reviewed them in data rooms, and we did not -- and 11 this is, by the way, is all in our published reports. 12 We made it clear we did not take possession, we 13 reviewed it through -- through review, I think were 14 called review rooms that were set up in the data 15 system of the -- all the servicers.</p> <p>16 Q. In order for you and OMSO to feel as if 17 the credit -- the crediting process was appropriate, 18 you relied on the samples they provided you of the 19 crediting?</p> <p>20 MR. PISTILLI: Objection.</p> <p>21 THE WITNESS: We determined that the 22 sample had been properly pooled, and we -- and 23 we -- we, then, did testing based on the data 24 that was given to us, yes.</p> <p>25 MR. TANTILLO: One moment, please.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. All right.</p> <p>2 MR. TANTILLO: Do you guys want to 3 break for lunch?</p> <p>4 THE WITNESS: How much more?</p> <p>5 MR. EPSTEIN: That's the question, if 6 you're going to be another 30 minutes, no. If 7 you're going to be more than 30 minutes, then, 8 yes.</p> <p>9 MR. DI MARCO: More than 30.</p> <p>10 THE VIDEOGRAPHER: The time now is 11 12:21 p.m., and we will be going off record.</p> <p>12 (RECESS TAKEN)</p> <p>13 THE VIDEOGRAPHER: The time now is 14 1:32 p.m., and we are back on record. You may 15 begin.</p> <p>16 BY MR. TANTILLO:</p> <p>17 Q. Mr. Smith, I want to show you what we've 18 marked as Plaintiffs' Number 13, and let counsel for 19 Defendants review the document.</p> <p>20 (EXHIBIT NUMBER 13 WAS MARKED FOR IDENTIFICATION)</p> <p>21 MR. PISTILLI: I will just comment 22 again that it has the yellow highlighting that 23 was not in the produced version.</p> <p>24 MR. TANTILLO: Our position, as I said 25 previously --</p>
<p style="text-align: right;">Page 95</p> <p>1 MR. SCHNEIDER: Everybody waiting on 2 me, sorry.</p> <p>3 BY MR. TANTILLO:</p> <p>4 Q. Do you know if the sampling that was done 5 and the crediting that was done in any way violated 6 the Equal Credit Opportunity Act?</p> <p>7 MR. PISTILLI: Object to the form.</p> <p>8 THE WITNESS: For what? What are we -- 9 again, you have to be more specific. Are you 10 talking about consumer relief or metrics?</p> <p>11 BY MR. TANTILLO:</p> <p>12 Q. Consumer relief.</p> <p>13 A. The consumer relief that was granted was 14 not the -- on the entire portfolio that Chase had. It 15 was a -- it was selected -- I mean, it was -- it was a 16 significant but not the complete sample of -- I mean, 17 it wasn't every loan they had. We were not -- and we 18 were not empowered and did not do a fair lending test.</p> <p>19 Q. So you weren't aware if -- yeah, you said 20 there was no fair lending test done --</p> <p>21 A. No.</p> <p>22 Q. -- on what was done in consumer relief. 23 How about the metrics testing, was there a fair 24 lending test on those?</p> <p>25 A. There was not.</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. PISTILLI: You don't need a 2 position on it. I'm just noting for the record 3 what the document is --</p> <p>4 MR. EPSTEIN: Can I get a copy, please?</p> <p>5 MR. PISTILLI: -- as well.</p> <p>6 (WITNESS REVIEWS DOCUMENT)</p> <p>7 BY MR. TANTILLO:</p> <p>8 Q. Mr. Smith, have you reviewed Number 13?</p> <p>9 A. I have.</p> <p>10 Q. Towards the bottom of the page highlighted 11 there for you, sir, there's a statement which states 12 in effect, I'm paraphrasing, that until the lien is 13 released, the requirements of there being a single 14 point of contact is still necessary. Is that your 15 understanding as well?</p> <p>16 MR. PISTILLI: Objection --</p> <p>17 THE WITNESS: No, that's what this --</p> <p>18 MR. PISTILLI: Pardon me -- objection, 19 lacks foundation and calls for a legal 20 conclusion.</p> <p>21 THE WITNESS: That's what this says.</p> <p>22 BY MR. TANTILLO:</p> <p>23 Q. Was that the -- was that the law or was 24 that the provision of the National Mortgage 25 Settlement, was that the -- was the National Mortgage</p>

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<p>1 Settlement required?</p> <p>2 A. It required a single point of contact</p> <p>3 for -- at the very least, for applications for loan</p> <p>4 modification. And I don't have it here in front of</p> <p>5 me, obviously, but it may have well gone beyond that.</p> <p>6 This also does -- yeah -- yes. So the short answer,</p> <p>7 yes.</p> <p>8 Q. So for loans that -- but you said that for</p> <p>9 loans that needed to be modified or -- was there an</p> <p>10 application necessary for that?</p> <p>11 A. Well, no, it did -- it required -- and,</p> <p>12 again, it's been a while since I've read through the</p> <p>13 SPOC provisions, single point of contact, but the --</p> <p>14 the settlement required the availability of a single</p> <p>15 point of contact. It was mainly, again, in the</p> <p>16 context of the application for relief.</p> <p>17 I will say that Reg X which is the Real</p> <p>18 Estate Settlement Procedure Act, is much of what's</p> <p>19 referred to in this memo. And so I think they may</p> <p>20 well be talking also and even more about compliance</p> <p>21 with the CFPB rules than about the settlement.</p> <p>22 MR. PISTILLI: And I'm just now, again,</p> <p>23 going to renew with increased vigor my objection</p> <p>24 regarding Counsel's continued violation of</p> <p>25 Judge Francis's order limiting regarding</p>	<p>Page 99</p> <p>1 MR. TANTILLO: And secondarily,</p> <p>2 obviously, it was the lien releases and the</p> <p>3 processes and the various things that happened</p> <p>4 pursuant to these settlements which caused the</p> <p>5 harm to my clients.</p> <p>6 MR. PISTILLI: Chase's position is that</p> <p>7 you have not adequately stated any basis for</p> <p>8 pursuing this discovery at this time. It's a</p> <p>9 violation of Judge Francis's order, and we</p> <p>10 reserve all rights.</p> <p>11 But if you insist on continuing despite</p> <p>12 that fact, go ahead.</p> <p>13 BY MR. TANTILLO:</p> <p>14 Q. With regards to -- you mentioned Reg X and</p> <p>15 the substances that was within, I believe it was</p> <p>16 Number 13. I previously asked you about Reg X,</p> <p>17 obviously. And my question was, in order to comply</p> <p>18 with Regulation X, did there come a point in time when</p> <p>19 the servicers may have asked you whether or not they</p> <p>20 needed to release their first and second liens. Now</p> <p>21 having known what Reg X is, do you have any response</p> <p>22 to that?</p> <p>23 A. The answer to that question is -- I'm</p> <p>24 sorry.</p> <p>25 MR. PISTILLI: Object to form.</p>
	<p>Page 101</p> <p>1 THE WITNESS: The answer to that</p> <p>2 question is no.</p> <p>3 BY MR. TANTILLO:</p> <p>4 Q. Now, the National Mortgage Settlement and</p> <p>5 RMBS settlement were pursuant and subject to the</p> <p>6 various SPAs that were implemented by the Treasury; is</p> <p>7 that correct?</p> <p>8 A. I don't understand that question.</p> <p>9 Q. Was there various regulations, for</p> <p>10 example, the HAMP and various Treasury regulations</p> <p>11 that were subsumed under the National Mortgage</p> <p>12 Settlement?</p> <p>13 MR. PISTILLI: Object to the form.</p> <p>14 THE WITNESS: The National Mortgage</p> <p>15 Settlement settled a number of claims under</p> <p>16 federal law relating, primarily, and I don't</p> <p>17 have them here with me, but they were federal</p> <p>18 consumer compliance claims and state claims</p> <p>19 regarding the handling of these loans.</p> <p>20 HAMP regulations were referred to in</p> <p>21 some provisions of the settlement, but the</p> <p>22 settlement did not enforce any HAMP requirements</p> <p>23 directly. It had its own explicit requirements</p> <p>24 which may or may not have been consistent with</p> <p>25 HAMP.</p>

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<p>1 BY MR. TANTILLO:</p> <p>2 Q. So it's your --</p> <p>3 A. And -- and -- and the -- and the RMBS</p> <p>4 settlement was about allegations of misconduct, shall</p> <p>5 we say, in the -- in the -- in the original -- in the</p> <p>6 pooling together and selling of mortgage-backed</p> <p>7 securities.</p> <p>8 Q. So it's your position that nothing within</p> <p>9 the National Mortgage Settlement required compliance</p> <p>10 with HAMP or any servicer participation agreements?</p> <p>11 A. The National Mortgage Settlement required</p> <p>12 compliance with the servicing standards set forth in</p> <p>13 the -- in the consent judgments. Any other -- any</p> <p>14 other legal requirements were not -- some legal</p> <p>15 requirements were stayed -- not stayed, but were</p> <p>16 settled by -- alleged violations of some legal</p> <p>17 requirements were settled by this compliance, but</p> <p>18 other outstanding legal obligations of mortgage</p> <p>19 lenders and servicers generally were not settled.</p> <p>20 (EXHIBIT NUMBER 14 WAS MARKED FOR IDENTIFICATION)</p> <p>21 BY MR. TANTILLO:</p> <p>22 Q. Mr. Smith, I'm going to show you what's</p> <p>23 been marked as Plaintiffs' Exhibit Number 14. I'm</p> <p>24 going to ask you to read number 11 of this.</p> <p>25 MR. EPSTEIN: Can I get a copy?</p>	<p>Page 102</p> <p>1 National Mortgage Settlement?</p> <p>2 MR. PISTILLI: Object to the form.</p> <p>3 THE WITNESS: I believe I just said,</p> <p>4 the other law prevailed. In other words, the</p> <p>5 National Mortgage Settlement provisions had to be</p> <p>6 be modified or the enforcement of them had to be</p> <p>7 modified to comply with other law.</p> <p>8 BY MR. TANTILLO:</p> <p>9 Q. Was there any metrics that would determine</p> <p>10 whether or not there was compliance with the other</p> <p>11 law, the applicable laws, i.e., the service</p> <p>12 participation agreements and the HAMP?</p> <p>13 MR. PISTILLI: Object to the form.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MR. TANTILLO:</p> <p>16 Q. And did your office and/or you do anything</p> <p>17 to ensure compliance with the HAMP and the service</p> <p>18 participation agreements?</p> <p>19 A. What we did with all servicers was to meet</p> <p>20 and require them to provide to us their assessment of</p> <p>21 what the applicable requirements we've just</p> <p>22 discussed -- applicable to their compliance with the</p> <p>23 settlement were. And we worked through a series of</p> <p>24 protocols and adjustments. We sought to work through</p> <p>25 protocols and adjustments necessary to ensure that we</p>
<p>1 MR. TANTILLO: Yes, sir.</p> <p>(WITNESS REVIEWS DOCUMENT)</p> <p>3 THE WITNESS: Yes, I'm familiar with</p> <p>4 this.</p> <p>5 BY MR. TANTILLO:</p> <p>6 Q. So that states that the National Mortgage</p> <p>7 Settlement was pursuant, obviously, to the HAMP and</p> <p>8 the servicers --</p> <p>9 A. No -- no, it doesn't.</p> <p>10 MR. PISTILLI: Object to the form, it</p> <p>11 calls for a legal conclusion.</p> <p>12 THE WITNESS: With respect, it does</p> <p>13 not. This provision deals with -- applicable</p> <p>14 requirements means requirements of -- from</p> <p>15 outside the settlement that could toll or limit</p> <p>16 compliance with the settlement's terms. So,</p> <p>17 yeah, if there was a conflict between the</p> <p>18 requirements of the settlement and the law</p> <p>19 referred to in this paragraph, this law</p> <p>20 prevailed. And we were required -- authorized,</p> <p>21 certainly, and probably required to amend our</p> <p>22 protocols in order to comply with the other --</p> <p>23 with the other law.</p> <p>24 BY MR. TANTILLO:</p> <p>25 Q. So which came first, the other law or the</p>	<p>Page 103</p> <p>1 wouldn't cause them not to comply.</p> <p>2 The issue really was whether compliance</p> <p>3 with the National Mortgage Settlement would require</p> <p>4 that a servicer put itself in a position of default or</p> <p>5 where it could be penalized.</p> <p>6 Q. Is there any documents which show this</p> <p>7 type of protocol to ensure that they weren't going to</p> <p>8 be in default of that service participation agreement</p> <p>9 and/or HAMP?</p> <p>10 A. We had a written protocol -- we had a</p> <p>11 written protocol, it was reviewed and agreed by all</p> <p>12 servicers and my people and me that -- that</p> <p>13 specified -- that specified where -- what the</p> <p>14 applicable requirements were. And it changed from</p> <p>15 time to time. If there were new regulations or a</p> <p>16 change in regulations, there could be a change.</p> <p>17 And there were some individual cases, not</p> <p>18 many, where applicable requirements were alleged as a</p> <p>19 basis for noncompliance or for -- or the compliance</p> <p>20 should either be waived or that it should be altered,</p> <p>21 but not many.</p> <p>22 Q. Is there a certain title for that</p> <p>23 document?</p> <p>24 A. I don't know. I don't recall. If there</p> <p>25 is, I don't recall it.</p>

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<p style="text-align: right;">Page 106</p> <p>1 Q. And who would be in possession of such a 2 document?</p> <p>3 A. It would have been in -- it might -- it 4 was in the possession of my colleagues and of me. 5 Whether it is still in our possession, I don't know. 6 Settlements are completed.</p> <p>7 Q. I want to turn to -- you previously 8 brought up or I previously brought up and you answered 9 me, the anti-blight provisions of the settlement, and 10 I think your response was to the consumer relief 11 aspect of it. Was there a metrics testing aspect of 12 the anti-blight requirements?</p> <p>13 A. No.</p> <p>14 Q. So there was no metric that -- that took 15 into effect whether or not either the consumer relief 16 or the actions of the National Mortgage Settlement 17 caused blight of any sort?</p> <p>18 A. Yes, that's correct.</p> <p>19 Q. Is there a servicing standard under the 20 National Mortgage Settlement for blight?</p> <p>21 A. Servicing standards I believe do 22 include -- there are some servicing standards that 23 apply. I'm not sure whether the term "blight" is 24 used, but to distressed areas. I -- I can't remember. 25 There were just a few. They are not covered by a</p>	<p style="text-align: right;">Page 108</p> <p>1 BY MR. TANTILLO:</p> <p>2 Q. I'm going to ask you to review Plaintiffs' 3 Exhibit Number 15.</p> <p>4 A. Yes, sir.</p> <p>5 (WITNESS REVIEWS DOCUMENT)</p> <p>6 Q. Mr. Smith, you've had a chance to review 7 Plaintiffs' Exhibit Number 16 -- excuse me, 15?</p> <p>8 A. 15, yes, I have.</p> <p>9 Q. What is this, do you know? Have you 10 recognized something like this?</p> <p>11 A. Well, it's entitled Request for Mortgage 12 Assistance Form.</p> <p>13 Q. Have you seen these types of forms before?</p> <p>14 A. No.</p> <p>15 Q. Was there supposed to be a form such as a 16 Request for Mortgage Assistance filed to obtain 17 various types of consumer relief?</p> <p>18 A. Consumer relief credit was obtained under 19 the settlement by the servicer after the servicer 20 showed us that it had given -- granted relief to 21 borrowers on loans that qualified for relief under the 22 definitions set forth in the settlement, that the 23 relief had been done in a manner consistent with the 24 settlement and that the credit sought was consistent 25 with the amount the settlement allowed. The</p>
<p style="text-align: right;">Page 107</p> <p>1 metric, and we didn't -- it's not that we paid no 2 attention to them, it's just we -- they weren't -- 3 they weren't what we were testing or we weren't 4 required to do anything about them.</p> <p>5 Q. Do you know whether or not, under those 6 requirements you just mentioned, if there were lien 7 releases whether or not borrowers would have to be 8 notified of these releases?</p> <p>9 MR. PISTILLI: Object to the form.</p> <p>10 THE WITNESS: Again, I need you to be a 11 little more -- I'm sorry.</p> <p>12 BY MR. TANTILLO:</p> <p>13 Q. Okay. Let's ask -- let's say there's a 14 second lien release on a second mortgage. After a 15 letter was sent to or if there was a letter sent, in 16 order for them -- in order for them to receive 17 consumer relief credit, would they have to notify the 18 borrower or the municipalities?</p> <p>19 MR. PISTILLI: Object to the form.</p> <p>20 THE WITNESS: They notified the 21 borrowers, whether they were required to do so I 22 just don't recall now. They were not required 23 to notify the municipalities. "They" being the 24 servicers.</p> <p>25 (EXHIBIT NUMBER 15 WAS MARKED FOR IDENTIFICATION)</p>	<p style="text-align: right;">Page 109</p> <p>1 formalities -- for this purpose, the formalities of 2 how the relief was sought were not our concern.</p> <p>3 Q. So there was no determination on your part 4 whether or not a borrower even wanted consumer -- even 5 wanted to have their mortgage modified?</p> <p>6 MR. PISTILLI: Object to the form.</p> <p>7 THE WITNESS: Well, if a mortgage -- 8 again, there were various forms of consumer 9 relief. If the form of relief you're talking 10 about is mortgage loan modification, change of 11 the payment terms, we did always have in the -- 12 in our review if not -- yes, if not an 13 application, an agreement under which the 14 modification was to be given. It varied by 15 servicer. And we did have to determine for some 16 forms of relief that the house was 17 owner-occupied, and there were times we did; 18 times we didn't.</p> <p>19 But if we did, we had to -- we had 20 documentation that the -- the relief had been 21 sought -- or the relief had been grounded based 22 on documentation that showed that it was -- the 23 loan was qualified for whatever the relief we're 24 talking about was.</p>

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<p>1 BY MR. TANTILLO:</p> <p>2 Q. As you know, my client bought thousands of</p> <p>3 mortgages from Chase, as you may know. Many of his</p> <p>4 borrowers received lien releases, and also his</p> <p>5 borrowers received second lien extinguishment letters.</p> <p>6 Based on what you just said there, how would that be</p> <p>7 possible if these individuals never asked for any kind</p> <p>8 of modification?</p> <p>9 MR. PISTILLI: Object to the form.</p> <p>10 MR. EPSTEIN: Object to the form.</p> <p>11 MR. PISTILLI: Lacks foundation.</p> <p>12 THE WITNESS: As I said to you, that --</p> <p>13 my prior answer was about first lien mortgage</p> <p>14 modifications. There may have been</p> <p>15 circumstances where if a loan was being</p> <p>16 expunged, the amount of proof required under</p> <p>17 the -- under the protocols that we'd agreed with</p> <p>18 all servicers may have been less. I don't</p> <p>19 recall whether we required notice to the</p> <p>20 borrower and consent of the borrower or not.</p> <p>21 BY MR. TANTILLO:</p> <p>22 Q. So with regards to second lien</p> <p>23 extinguishments or second lien releases, what kind of</p> <p>24 proof did you require?</p> <p>25 A. I don't remember if there was a --</p>	<p>Page 110</p> <p>1 in place, have second lien extinguishments sent to</p> <p>2 them?</p> <p>3 MR. EPSTEIN: Objection to form.</p> <p>4 MR. PISTILLI: Object to the form.</p> <p>5 THE WITNESS: What I know is second</p> <p>6 liens were extinguished, the borrowers were</p> <p>7 notified. That's what I know sitting here right</p> <p>8 now.</p> <p>9 BY MR. TANTILLO:</p> <p>10 Q. You previously stated that there was a</p> <p>11 minimal amount of first liens that received credit</p> <p>12 under the settlements; is that correct?</p> <p>13 A. No. I don't know that I did say that. In</p> <p>14 fact, I'm sure I didn't say that, or if I did say</p> <p>15 that, I was incorrect.</p> <p>16 Q. Well, we can go back to that.</p> <p>17 But, nevertheless, what were the</p> <p>18 parameters in order to obtain a first lien credit</p> <p>19 under the RMBS settlement?</p> <p>20 MR. PISTILLI: Object to the form.</p> <p>21 THE WITNESS: Those parameters are set</p> <p>22 out in, again, agreed protocols we had with</p> <p>23 them. There was -- it was not a -- there was a</p> <p>24 publicly filed -- for a prosecution agreement, I</p> <p>25 don't think we had the same kind of backup to</p>
<p>1 Q. Is there anybody in your office who would</p> <p>2 know that?</p> <p>3 A. Well, in the first place, there's a</p> <p>4 document that's a public document called -- which is</p> <p>5 an exhibit to the consent judgment itself, which</p> <p>6 discusses in some detail what's required. There is</p> <p>7 also attached to that a -- a schedule showing the</p> <p>8 credits we give for various kinds of relief. And we</p> <p>9 do have work plan and test scripts which follow which</p> <p>10 show how we went through the various steps to</p> <p>11 determine that relief was, in fact, granted and</p> <p>12 consistent with the settlement. And who would have it</p> <p>13 would be -- it would still be in our files if we kept</p> <p>14 those files.</p> <p>15 Q. Was there a certain period of time in</p> <p>16 which you're required to keep the files?</p> <p>17 A. No. Although, Chase also has those</p> <p>18 agreements. They were done, basically, to an agreed</p> <p>19 set of protocols.</p> <p>20 Q. However, how would it be possible under</p> <p>21 the various rubrics that you had in terms -- in order</p> <p>22 to determine if a borrower sought some kind of relief</p> <p>23 for modification that the individuals such as my</p> <p>24 clients, his borrowers, how would they conceivably be</p> <p>25 able to, using all the various safeguards that you had</p>	<p>Page 111</p> <p>1 that that we had on the NMS, but it was done on</p> <p>2 roughly the same basis.</p> <p>3 And relief was granted based on the</p> <p>4 nature of the loan, was it a distressed loan,</p> <p>5 generally, although it could have been</p> <p>6 otherwise, and did it -- were payments under the</p> <p>7 loan reduced in a way -- manner sufficient to</p> <p>8 justify credit. But there's -- there was a</p> <p>9 whole set of protocols developed to implement</p> <p>10 this. Some of it, I believe, was in the</p> <p>11 deferred prosecution agreement, we fleshed it</p> <p>12 out and when -- in more -- more -- much more</p> <p>13 detailed agreements when we implemented it.</p> <p>14 BY MR. TANTILLO:</p> <p>15 Q. Now, in order for a first lien loan to be</p> <p>16 taken for credit, did the occupancy have to be</p> <p>17 verified?</p> <p>18 A. I'm sorry?</p> <p>19 Q. Would occupancy have to be verified?</p> <p>20 A. In some -- at least in some of the cases,</p> <p>21 yes.</p> <p>22 Q. And what were the cases where it did not</p> <p>23 have to be?</p> <p>24 A. I don't know. I can't remember the exact</p> <p>25 details. For most of the credits we got, to get the</p>

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<p style="text-align: right;">Page 114</p> <p>1 maximum credit a loan had to be owned by the servicer,    2 serviced by the servicer and owner -- owner-occupied.</p> <p>3 Q. And they were able to take credit for    4 loans that also were not occupied under a different    5 rubric?</p> <p>6 A. There may well have been some of those for    7 less credit.</p> <p>8 MR. TANTILLO: One moment.</p> <p>9 BY MR. TANTILLO:</p> <p>10 Q. Under the situation where owner-occupancy    11 was required, what type of servicing standards were    12 the banks held to?</p> <p>13 MR. PISTILLI: Object to the form.</p> <p>14 THE WITNESS: Are we talking now about    15 National Mortgage Settlement servicing    16 standards?</p> <p>17 BY MR. TANTILLO:</p> <p>18 Q. Let's start with the National Mortgage --    19 National Mortgage Settlement.</p> <p>20 A. It would depend on the metric. And I'm    21 not sure how many if -- of the mortgage -- of the    22 metrics -- the servicing standard -- the metrics that    23 measured servicing standard compliance required    24 owner-occupancy. There was -- there was    25 owner-occupancy -- some owner-occupancy requirement</p>	<p style="text-align: right;">Page 116</p> <p>1 said to you before was, there were very few, if    2 any, first lien extinguishments.</p> <p>3 BY MR. TANTILLO:</p> <p>4 Q. I apologize.</p> <p>5 A. We did not -- the difference there --    6 there's a difference between that, and I'm -- just for    7 the record, between that and a loan modification where    8 you reduce or defer payment of principal where you    9 either forgive the payment of principal or reduce it    10 for a period -- forbear on it for a period in order to    11 reduce the cost -- the cost of ownership.</p> <p>12 Again, I -- there may well -- there may    13 have been -- I hate to say never with the settlement,    14 because we ran into a lot of different things -- but    15 for all servicers, I think that it was very seldom    16 if -- very seldom, at the most, we ever ran into a    17 extinguishment of a first lien loan. I can't say    18 never, because I don't know that. But I think it was    19 very -- the majority of modifications were    20 reductions -- were either -- were forgiveness of loan    21 principal or in some cases forbearance of loan    22 principal, in other words, just -- just not collecting    23 on a portion of the loan.</p> <p>24 Q. Were there first lien extinguishments    25 under the RMBS settlement?</p>
<p style="text-align: right;">Page 115</p> <p>1 and -- for much -- for some of the credit for consumer    2 relief under both the NMS and the RMBS settlement.</p> <p>3 Q. Do you know or have any idea how the    4 servicers would determine owner-occupied? What they    5 would do to determine whether or not there was    6 somebody living in the residence?</p> <p>7 A. A form, I don't know -- I'm not sure I can    8 tell you all -- don't know today all the forms. One    9 was to simply -- when the -- there -- there was    10 documentation in terms of consumer relief of the    11 agreement with regard to modification, and among the    12 evidence we looked at for those loans was an agreement    13 where the borrower had checked a box, essentially,    14 saying they were resident in the -- in the -- in the    15 premises. There was some additional bits of    16 information you would see from time to time when    17 addresses were -- correspondence was sent different    18 from the address on the -- on the loan -- on the    19 premises where the loan was located. But it varied,    20 so we did do some follow-up on that if it was    21 required.</p> <p>22 Q. Do you know if owner-occupancy was    23 required for a first lien extinguishment?</p> <p>24 MR. PISTILLI: Object to the form.</p> <p>25 THE WITNESS: Let's be clear. What I</p>	<p style="text-align: right;">Page 117</p> <p>1 A. Again, I don't -- I don't know that there    2 were, but I'm -- I hate to say it, I don't know for    3 sure. But I -- if there were, it was -- it was very    4 few if any.</p> <p>5 Q. Was there a reason why the servicers did    6 not use that provision?</p> <p>7 A. Well, in general, the category of    8 relief -- the objective of many of these -- of these    9 settlements was to keep families in their homes and to    10 put the -- based on repayment. I mean, putting them    11 in a position where they could actually repay the loan    12 based on -- on their income levels and so forth.    13 Forgiveness of a first lien was more than, I think,    14 the parties had bargained for and more than most    15 servicers were willing to do. I mean, theoretically,    16 I guess they could have done it. But, again, they    17 almost never did that.</p> <p>18 Q. Was it possible for a servicer under,    19 let's start with, the National Mortgage Settlement to    20 provide consumer relief without providing notice to    21 the borrower?</p> <p>22 MR. PISTILLI: Object to the form.</p> <p>23 THE WITNESS: Well, again, there are    24 different forms of consumer relief. For    25 example, in a short sale the borrower actually</p>

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1	asks for it, so there's notice there. In the --	1	institutionally aware of it, yes.
2	in the case of most of the first lien	2	Q. Do you know who in your office is
3	forgivenesses we were just talking about there	3	personally aware of the fact that they were releasing
4	had been -- there had been a request for	4	liens to take them out of metrics testing?
5	forgiveness for -- for a forgiveness of	5	A. Well --
6	principal or a -- or a request for modification	6	MR. EPSTEIN: Are you saying -- you
7	is generally what was done. In the case of	7	said "they," they being Chase?
8	second liens it -- I think it really did vary.	8	MR. TANTILLO: Yes.
9	BY MR. TANTILLO:	9	THE WITNESS: It would have been my
10	Q. So there was a possibility that the	10	counsel.
11	borrower would never know --	11	BY MR. TANTILLO:
12	A. Oh, the borrower --	12	Q. So it did come as a surprise to you when
13	Q. -- until they sold their house or	13	you learned that they were releasing liens to take
14	something like --	14	them out of the metrics?
15	A. Oh, no, the borrower would know, because	15	A. Well, I didn't -- I didn't know that I
16	one of the evidences that we have that the forgiveness	16	learn or needed to learn any of that. The documents
17	had actually been made was the providing to the	17	we've looked at before show that we had agreed that if
18	borrower of a 1099 for forgiveness -- forgiveness	18	they did that, which their -- was at their discretion,
19	income.	19	not mine. We didn't direct them to do anything. If
20	Q. But it was possible that for a period of	20	they did that, loans that did not have a lien
21	time, at least until they receive a 1099, that they	21	applicable to them were not subject to the settlement.
22	could still be paying on that second lien?	22	Q. With regards to loan level data, and I
23	A. I would have to speculate to say that,	23	know we spoke about this before, did the Office of
24	I -- but it's -- I -- I can't -- I don't know for	24	Mortgage Settlement have the ability to review loan
25	sure.	25	level data?
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1	Q. Just one moment, sir.	1	A. What do you mean by that?
2	(EXHIBIT NUMBER 16 WAS MARKED FOR IDENTIFICATION)	2	Q. Did they have the ability to review the
3	MR. PISTILLI: Copy, please?	3	actual -- not just the systems of record, but, you
4	MR. TANTILLO: Yes, sir.	4	know, payment history, escrow and taxes, all the types
5	BY MR. TANTILLO:	5	of things that are required under various laws for
6	Q. Mr. Smith, have you had a chance to	6	servicing?
7	review --	7	MR. PISTILLI: Object to the form.
8	A. Yes.	8	THE WITNESS: In assessing compliance
9	Q. -- Plaintiffs' Number 16?	9	with the metrics and in consumer relief we used
10	A. Yes, sir, I have.	10	loan level data with regard to loans in the
11	Q. The first highlighted part talks about the	11	sample populations, and we derived that from the
12	releasing of liens so they would not be included in	12	systems of record of all the -- of each of the
13	the DOJ metrics. Was that something that you were	13	servicers.
14	aware of?	14	BY MR. TANTILLO:
15	MR. PISTILLI: Objection, lacks	15	Q. But -- so loan level data was used to
16	foundation.	16	determine the samples?
17	THE WITNESS: You're asking was I	17	A. No.
18	personally aware of it, the answer is no.	18	MR. PISTILLI: Object to the form.
19	BY MR. TANTILLO:	19	THE WITNESS: No. The samples -- as I
20	Q. Was your office aware?	20	said before, we went through a very long -- "we"
21	A. Given what we have reviewed until now, I	21	being my colleagues including both counsel and
22	think there was an understanding -- there was an	22	the professional firms -- went through a long
23	understanding that releases of liens would take when	23	series of discussions and protocol development
24	it was out of -- out of the populations for metrics	24	activities with the IRG and in some cases with
25	testing. And so I -- I suppose in that sense I was	25	the -- with the operations of the -- servicer --

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<p>1 operations of the servicers to determine that      2 the population -- to determine a population of      3 loans as to which a metric applied. There were      4 different populations -- well, not obviously,      5 there were different populations for different      6 metrics.</p> <p>7 A statistically valid sample was      8 selected in each case from the population for a      9 particular metric. Compliance by the servicer      10 with the -- with settlement was measured by the      11 application of tests included in the metric      12 definition to the loans in the statistically      13 valid sample. And the basis for determining      14 whether or not there had been compliance was      15 loan level data drawn from the system of record      16 of the servicer.</p> <p>17 BY MR. TANTILLO:</p> <p>18 Q. So if a metric did not apply, then the      19 loan data or the -- anything related to that      20 particular loan would never appear or never come      21 before you?</p> <p>22 A. If a loan was not in the population      23 covered by a metric, no data -- well, we would -- they      24 would not be in the population. It would not -- none      25 of the -- and it would not be selected in the</p>	<p>Page 122</p> <p>1 that -- that loan that didn't have a lien      2 attached to it would not be in the population.      3 BY MR. TANTILLO:</p> <p>4 Q. So if there was a lien attached to it,      5 then it should have shown up at the population?</p> <p>6 A. It might have, it depends on the metric.</p> <p>7 MR. TANTILLO: All right. We're going      8 to finish up. Could we take a break just for      9 five minutes to see if we have any last      10 questions?</p> <p>11 THE WITNESS: Sure.</p> <p>12 THE VIDEOGRAPHER: The time now is      13 2:13 p.m., and we will be going off record.</p> <p>14 (RECESS TAKEN)</p> <p>15 THE VIDEOGRAPHER: The time now is      16 2:25 p.m., and we are back on record. You may      17 begin.</p> <p>18 MR. TANTILLO: Thank you.</p> <p>19 BY MR. TANTILLO:</p> <p>20 Q. Mr. Smith, who on the Chase IRG was your      21 or OMSO's primary contact?</p> <p>22 A. Nikki -- gosh, I hope I can pronounce it      23 right -- Hops.</p> <p>24 Q. Holsopple?</p> <p>25 A. Holsopple.</p>
<p>Page 123</p> <p>1 statistically valid sample, and so we would not -- we      2 would not see that information.</p> <p>3 Q. Would this explain why a system of record      4 such as Recovery 1, perhaps, didn't appear in your      5 system of record until a certain period of time?</p> <p>6 MR. PISTILLI: Object to the form,      7 misstates prior testimony, lacks foundation.</p> <p>8 THE WITNESS: First, I don't know that      9 you -- I don't know the system -- that the      10 Recovery 1 didn't exist in those systems.      11 And in our -- it was known to us. The question      12 was did we query -- did we include that -- that      13 system in queries for metrics when we were      14 deriving populations from which to draw      15 statistically valid samples to test.</p> <p>16 And so the -- so if there were no loans      17 and if it were established that there were no      18 loans in a system of a servicer, they would --      19 there would be no query extended to that system      20 or there would be no response from that system.      21 It wouldn't be included in the population by      22 the -- by the population draw. It wouldn't --      23 there would be -- if there was no -- if there      24 was no mortgage which would -- which I expect      25 was in the system request, then no loans from</p>	<p>Page 125</p> <p>1 Q. And who in the line of business was your      2 primary contact or OMSO's?</p> <p>3 A. I'm actually trying to remember. I don't      4 remember in their operation, I just can't -- I just      5 can't remember.</p> <p>6 Q. As the monitor of the National Mortgage      7 Settlement, who was the supervising entity for your      8 work?</p> <p>9 MR. EPSTEIN: Objection to form.</p> <p>10 THE WITNESS: Well, I -- I was      11 monitored, for want of a better word, by the      12 monitoring committee, which we have just      13 discussed, which was provided for in each of the      14 consent judgments. And I believe I described      15 that previously in this testimony. And I guess,      16 theoretically, by Judge Rosemary Collyer with      17 whom the settlement documents were filed.</p> <p>18 BY MR. TANTILLO:</p> <p>19 Q. As the monitor of the Residential Mortgage      20 Backed Security Settlement, who was your supervising      21 entity for your work there?</p> <p>22 MR. EPSTEIN: Objection to form.</p> <p>23 THE WITNESS: In that case, I was in      24 communication both with Chase and with the      25 Justice Department. There was no oversight,</p>

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<p style="text-align: right;">Page 126</p> <p>1 formal oversight, of the kind that was presently 2 at NMS.</p> <p>3 BY MR. TANTILLO:</p> <p>4 Q. Before we broke, you mentioned that there 5 was a deferred prosecution agreement?</p> <p>6 A. I'm -- that -- it -- there was an 7 agreement between the -- a settlement agreement 8 between the parties, that's a public document you can 9 get on the Justice web site. This was a kind of -- 10 this was a settlement that stayed prosecution. There 11 was no filing with the court. So it was never -- it 12 was never under -- under judicial oversight. And 13 there were some provisions, ongoing provisions, in 14 the -- in the agreement, but it was much less detailed 15 than the NMS had been. And the relief was only -- 16 there was no -- there was no -- it's -- well, was -- 17 now, was no equivalent of metric, you know, compliance 18 metrics, there was only consumer relief. There had 19 been -- there were other provisions, but I was not 20 involved with them.</p> <p>21 Q. Who was your primary contact or the Office 22 of Mortgage Settlement's primary contact at the 23 Department of Justice?</p> <p>24 A. Well, first and foremost, OMSO did not 25 do -- was not the entity through which I conducted the</p>	<p style="text-align: right;">Page 128</p> <p>1 MR. PISTILLI: Objection. 2 THE WITNESS: You would have to read -- 3 you're the lawyer -- you're the Justice lawyer, 4 you would have to read this and determine it. 5 I -- there was -- it was an agreement not to 6 prosecute, and the parties are all stated there. 7 There was -- and it was -- it didn't happen, so 8 I don't know.</p> <p>9 MR. TANTILLO: Tender the witness. 10 MR. PISTILLI: No questions. 11 MR. EPSTEIN: All right. You're done. 12 THE WITNESS: Thank you all very much. 13 Hope you have a safe trip home.</p> <p>14 THE VIDEOGRAPHER: The time now is 15 2:30 p.m. This concludes the videotaped 16 deposition of Joseph Smith. We are going off 17 record, once again, at 2:30 p.m.</p> <p>18 (SIGNATURE RESERVED)</p> <p>19 (DEPOSITION CONCLUDED AT 2:30 P.M.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																																																																																
<p style="text-align: right;">Page 127</p> <p>1 RMBS settlement. It was the internationally famous 2 firm Joseph A. Smith, Jr. Monitoring Limited which was 3 a Subchapter S corporation.</p> <p>4 And what was -- the question, who were my 5 contacts?</p> <p>6 Q. Yes, sir.</p> <p>7 A. My contacts at Justice changed, I had 8 several assistant US Deputy Attorney's General. And 9 there has been a change there, and so I don't think 10 any of them are still -- in fact, I know my last 11 contact was -- has gone into private practice.</p> <p>12 At Chase, did you ask me about Chase, I'm 13 sorry?</p> <p>14 Q. Well, you already asked -- you already 15 answered about Chase previously, you said Nikki 16 Holsopple?</p> <p>17 A. Well, it actually turns out she was -- 18 didn't have to be, but she was. She was in charge 19 of -- of the -- where they call the HRG for that 20 settlement which -- and it was the same -- and, yeah, 21 she is the same contact.</p> <p>22 Q. Had there been a violation of the deferred 23 prosecution agreement or the agreement between DOJ and 24 Chase, who would have enforced it, or what was the 25 provision to --</p>	<p style="text-align: right;">Page 129</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 Witness Name: Joseph A. Smith, Jr. February 9, 2017</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding-bottom: 2px;">Page</th> <th style="text-align: left; padding-bottom: 2px;">Line</th> <th style="text-align: left; padding-bottom: 2px;">Change</th> <th style="text-align: left; padding-bottom: 2px;">Reason</th> </tr> </thead> <tbody> <tr> <td style="padding-top: 2px;">3</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">4</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">5</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">6</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">7</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">8</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">9</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">10</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">11</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">12</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">13</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">14</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">15</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">16</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="padding-top: 2px;">17</td> <td colspan="3" style="text-align: center; padding-top: 2px;">I, Joseph A. Smith, Jr., have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.</td> </tr> <tr> <td style="padding-top: 2px;">18</td> <td colspan="3" style="text-align: center;"></td> </tr> <tr> <td style="padding-top: 2px;">19</td> <td colspan="3" style="text-align: center;">Joseph A. Smith, Jr.</td> </tr> <tr> <td style="padding-top: 2px;">20</td> <td colspan="3" style="text-align: center;"></td> </tr> <tr> <td style="padding-top: 2px;">21</td> <td colspan="3" style="text-align: center;">Sworn to and Subscribed before me</td> </tr> <tr> <td style="padding-top: 2px;">22</td> <td colspan="3" style="text-align: center;">_____, Notary Public.</td> </tr> <tr> <td style="padding-top: 2px;">23</td> <td colspan="3" style="text-align: center;">This _____ day of _____, 20_____.</td> </tr> <tr> <td style="padding-top: 2px;">24</td> <td colspan="3" style="text-align: center;">My Commission Expires:</td> </tr> <tr> <td style="padding-top: 2px;">25</td> <td colspan="3" style="text-align: center;"></td> </tr> </tbody> </table>	Page	Line	Change	Reason	3				4				5				6				7				8				9				10				11				12				13				14				15				16				17	I, Joseph A. Smith, Jr., have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.			18				19	Joseph A. Smith, Jr.			20				21	Sworn to and Subscribed before me			22	_____, Notary Public.			23	This _____ day of _____, 20_____.			24	My Commission Expires:			25			
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2 COUNTY OF DAVIDSON

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3  
4 C E R T I F I C A T E

5 I, Amy A. Brauser, RPR RMR CLR, the officer  
6 before whom the foregoing deposition was taken, do  
7 hereby certify that the witness was duly sworn by me  
8 prior to the taking of the foregoing deposition; that  
9 the testimony of said witness was taken by me to the  
10 best of my ability and thereafter reduced to  
11 typewriting under my direction; that I am neither  
12 counsel for, related to, nor employed by any of the  
13 parties to the action in which this deposition was  
14 taken, and further that I am not a relative or  
15 employee of any attorney or counsel employed by the  
16 parties thereto, nor financially or otherwise interest  
17 in the outcome of the action.

18

19 This is the 10th day of February, 2017.  
20

21  
22 \_\_\_\_\_  
Amy A. Brauser, RPR RMR CLR  
Notary Public # 20023030055  
23  
24  
25

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